



Dear 

DECISION ON YOUR ACCESS APPLICATION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (FOI Act), received by ACT Health Directorate (ACTHD) on Wednesday 3 April 2024, and rescoped on **Monday 22 April 2024**.

This application requested access to:

- ‘1. Ministerial briefings produced by the ACT Health Directorate which specifically relate to reforms made to ACT laws that changed the penalties for possessing, using, and cultivating small amounts of illicit drugs for personal use, and the anticipated or actual impacts of these changes on the ACT’s health system for the period of 1/1/2018-31/3/2024.*
- 2. Data on the following healthcare metrics on health impacts in the ACT, covering the period 1/1/2018-31/3/2024 (presented monthly):*
 - i. The number of cannabis-related ambulance calls and attendances*
 - ii. The number of cannabis-related hospital presentations*
 - iii. The number of people seeking treatment for cannabis use disorder.’*

I am an Information Officer appointed by the Director-General of ACT Health Directorate (ACTHD) under section 18 of the FOI Act to deal with access applications made under Part 5 of the Act. ACTHD was required to provide a decision on your access application by **Wednesday 5 June 2024**.

I have identified 27 documents holding the information within scope of your access application. These are outlined in the schedule of documents included at [Attachment A](#) to this decision letter.

For part 2 of your application, *i. The number of cannabis-related ambulance calls and attendances*, the data for ambulance presentations is publicly available through the Australian Institute of Health and Welfare (AIHW) site for [Alcohol, tobacco & other drugs in Australia](#), noting that this data has been through additional coding processes and is therefore higher quality than the data obtained directly from the ACT Ambulance Service.

In addition, the data requested for *iii. The number of people seeking treatment for cannabis use disorder* can also be found on the AIHW site, [Alcohol and other drug treatment services in Australia: early insights](#). This data was updated on 16 April 2024 with the 2022-23 data, with the data cubes containing the requested information available. Please note that the data for 2023-24 is currently being compiled by the AIHW, and will not be available for several months.

Decisions

I have decided to:

- grant full access to 10 documents;
- grant partial access to 4 documents; and
- refuse access to 13 documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as Attachment B to this letter.

In reaching my access decision, I have taken the following into account:

- The FOI Act;
- The contents of the documents that fall within the scope of your request; and
- The *Human Rights Act 2004*.

Full Access

I have granted access to 10 documents at references 3-4, 16-17, 19-20, 22-24, and 26.

Refused Access

I have decided to refuse access to 13 documents at references 1-2, 5-6, 8-15, and 18 which are wholly comprised of information that would reveal deliberations of Cabinet and is therefore taken to be contrary to the public interest to release, under Schedule 1.6 (1) Cabinet Information (d) the disclosure of which would reveal any deliberation of Cabinet.

The document at references 5 and 6, which are also partially comprised of information classified as information subject to legal professional privilege information, and under Schedule 1.2, it is taken to be contrary to the public interest to release. Schedule 1.2 information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

The documents at references 11-14 are partially comprised of mobile numbers of ACT Government employees.

Public Interest Factors Favouring Disclosure

The following factors were considered relevant in favour of the disclosure of the documents:

- Schedule 2, 2.1(a)(i) promote open discussion of public affairs and enhance the government's accountability; and
- Schedule 2, 2.1(a)(ii) contribute to positive and informed debate on important issues or matters of public interest.

Public Interest Factors Favouring Non-Disclosure

The following factors were considered relevant in favour of the non-disclosure of the documents:

- Schedule 2, 2.2 (a)(ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.

On balance, the personal information identified in these documents would not provide any government information pertinent to your request. Therefore, I have determined the information identified is contrary to the public interest and would not advantage the public in disclosing this information.

Partial Access

I have decided to grant partial access to 4 documents at references 7, 21, 25, and 27.

The document at reference 7 is partially comprised of information that would reveal deliberations of Cabinet and is therefore taken to be contrary to the public interest to release, under Schedule 1.6 (1) Cabinet Information (d) the disclosure of which would reveal any deliberation of Cabinet.

The document at reference 21 is partially comprised of information that could be expected to, under Schedule 1.14 (1) (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and (g) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety. The document is also comprised of information which could reasonably prejudice intergovernmental relations.

The documents at references 25 and 27 are partially comprised of mobile numbers of ACT Government employees as well as data relating to personal health information. Under Nationally agreed principles of data release outlined by the AIHW, ACT Health Directorate is not able to provide numbers 5 and fewer due to the risk of identification.

Public Interest Factors Favouring Disclosure

The following factors were considered relevant in favour of the disclosure of the documents:

- Schedule 2, 2.1(a)(i) promote open discussion of public affairs and enhance the government's accountability; and
- Schedule 2, 2.1(a)(ii) contribute to positive and informed debate on important issues or matters of public interest.

Public Interest Factors Favouring Non-Disclosure

The following factors were considered relevant in favour of the non-disclosure of the documents:

- Schedule 2, 2.2 (a)(ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004; and
- Schedule 2, 2.2 (a)(x) prejudice intergovernmental relations.

On balance, the personal information identified in these documents would not provide any government information pertinent to your request. Therefore, I have determined the information identified is contrary to the public interest and would not advantage the public in disclosing this information.

Charges

Processing charges are not applicable to this request.

Disclosure Log

Under section 28 of the FOI Act, ACTHD maintains an online record of access applications called a disclosure log. The scope of your access application, my decision and documents released to you will be published in the disclosure log not less than three days but not more than 10 days after the date of this decision. Your personal contact details will not be published.

<https://www.health.act.gov.au/about-our-health-system/freedom-information/disclosure-log>.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act

within 20 working days from the day that my decision is published in ACT Health's disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: ACTFOI@ombudsman.gov.au
Website: ombudsman.act.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Allara House
15 Constitution Avenue
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Further assistance

Should you have any queries in relation to your request, please do not hesitate to contact the FOI Coordinator on (02) 5124 9831 or email HealthFOI@act.gov.au.

Yours sincerely,



Maria Travers
A/g Executive Group Manager
Population Health Division
ACT Health Directorate


5 June 2024

FREEDOM OF INFORMATION SCHEDULE OF DOCUMENTS

Please be aware that under the *Freedom of Information Act 2016*, some of the information provided to you will be released to the public through the ACT Government's Open Access Scheme. The Open Access release status column of the table below indicates what documents are intended for release online through open access.

Personal information or business affairs information will not be made available under this policy. If you think the content of your request would contain such information, please inform the contact officer immediately.

Information about what is published on open access is available online at: <http://www.health.act.gov.au/public-information/consumers/freedom-information>

| APPLICANT NAME | WHAT ARE THE PARAMETERS OF THE REQUEST | FILE NUMBER |
|---|---|------------------|
|  | <p><i>'1. Ministerial briefings produced by the ACT Health Directorate which specifically relate to reforms made to ACT laws that changed the penalties for possessing, using, and cultivating small amounts of illicit drugs for personal use, and the anticipated or actual impacts of these changes on the ACT's health system for the period of 1/1/2018-31/3/2024.</i></p> <p><i>2. Data on the following healthcare metrics on health impacts in the ACT, covering the period 1/1/2018-31/3/2024 (presented monthly):</i></p> <ul style="list-style-type: none"> <i>i. The number of cannabis-related ambulance calls and attendances</i> <i>ii. The number of cannabis-related hospital presentations</i> <i>iii. The number of people seeking treatment for cannabis use disorder'</i> | ACTHDFOI23-24.40 |

| Ref No. | Page Number | Description | Date | Status Decision | Factor | Open Access release status |
|---------|-------------|---|-----------------|-----------------|-------------------------|----------------------------|
| 1. | 1 – 2 | Cabinet Meeting Brief – GBC19/34 Government Position on the Private Members Bill – Drugs of Dependence (Personal Use) Amendment Bill 2018 | 5 February 2019 | Refuse Release | Schedule 1, 1.6 Cabinet | NO |

| | | | | | | |
|-----|---------|---|-------------------|-----------------|--|-----|
| 2. | 3 – 5 | Cabinet Meeting Brief and attachment – GBC19/537 Government position on non-government amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 | 23 September 2019 | Refuse Release | Schedule 1, 1.6 Cabinet | NO |
| 3. | 6 – 8 | Briefing note – Question and Answer Health Directorate Briefing note | 1 October 2019 | Full Release | | YES |
| 4. | 9 – 10 | Chief Minister’s Talkback – Drugs of Dependence (Personal Use) Amendment Act 2019 | 2 December 2019 | Full Release | | YES |
| 5. | 11 – 19 | Ministerial Brief – GBC21/75 Exposure draft Cabinet Submission to the Select Committee on the Drugs and Dependence (Personal Use) Amendment Bill 2021 | 4 May 2021 | Refuse Release | Schedule 1, 1.2 Legal Schedule 1, 1.6 Cabinet | NO |
| 6. | 20 – 42 | Ministerial Brief and attachment – GBC21/272 Final Cabinet Submission – Government Submission to the Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 | 24 May 2021 | Refuse Release | Schedule 1, 1.2 Legal Schedule 1, 1.6 Cabinet | NO |
| 7. | 43 – 49 | Ministerial Brief – GBC21/375 Select Committee Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021 | 28 July 2021 | Partial Release | Schedule 1, 1.6 Cabinet | YES |
| 8. | 50 – 57 | Ministerial Brief – GBC21/664 Approach to Drugs of Dependence (Personal Use) Amendment Bill 2021 | 29 October 2021 | Refuse Release | Schedule 1, 1.6 Cabinet | NO |
| 9. | 58 – 84 | Ministerial Brief and attachments – GBC21/674 Human Services Subcommittee of Cabinet – Drugs of Dependence (Personal Use) Amendment Bill 2021 Discussion Paper | November 2021 | Refuse Release | Schedule 1, 1.6 Cabinet | NO |
| 10. | 85 – 87 | Legislation Proposal – Drugs of Dependence (Personal Use) Amendment Bill 2021 | 23 December 2021 | Refuse Release | Schedule 1, 1.6 Cabinet | NO |
| 11. | 88 – 93 | Ministerial brief – GBC21/820 Draft Cabinet Submission Drugs of Dependence (Personal Use) Amendment 2021 (Bill) | 15 February 2022 | Refuse Release | Schedule 1, 1.6 Cabinet Schedule 2, 2.2(a)(ii) Privacy | NO |

| | | | | | | |
|-----|-----------|--|-------------------|-----------------|--|-----|
| 12. | 94 – 118 | Ministerial brief and attachments – GBC22/108 Final Cabinet Submission – Drugs of Dependence (Personal Use) Amendment Bill 2021 | March 2022 | Refuse Release | Schedule 1, 1.6 Cabinet Schedule 2, 2.2(a)(ii) Privacy | NO |
| 13. | 119 – 126 | Ministerial brief – GBC22/140 Draft Cabinet Submission - Government Response to the Report on the Select Committee Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021 and Government amendments | April 2022 | Refuse Release | Schedule 1, 1.6 Cabinet Schedule 2, 2.2(a)(ii) Privacy | NO |
| 14. | 127 – 165 | Ministerial brief and attachments – GBC22/253 Final Cabinet Submission - Government Response to the Report on the Select Committee Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021 and Government amendments | May 2022 | Refuse Release | Schedule 1, 1.6 Cabinet Schedule 2, 2.2(a)(ii) Privacy | NO |
| 15. | 166 – 183 | Assembly business paper and attachments – Drugs of Dependence (Personal Use) Amendment Bill 2021 and Government amendments | June 2022 | Refuse Release | Schedule 1, 1.6 Cabinet | NO |
| 16. | 184 – 190 | Arrangements brief – Ministerial forum on proposed Government amendments to the Drugs of Dependence (Personal Use) Amendment Bill 2021 | 14 June 2022 | Full Release | | YES |
| 17. | 191 – 211 | Debate Speech – Drugs of Dependence (Personal Use) Amendment Bill 2021 | 21 July 2022 | Full Release | | YES |
| 18. | 212 – 219 | Cabinet Meeting Brief and attachments – Government Response to Petition 22-22 - Objection to the Drugs of Dependence (Personal Use) Amendment Bill 2021 | 8 August 2023 | Refuse Release | Schedule 1, 1.6 Cabinet | NO |
| 19. | 220 – 223 | Ministerial brief and attachment – GBC23/507 Drugs of Dependence reforms – Notifiable Instrument | 10 August 2023 | Full Release | | YES |
| 20. | 224 – 225 | Talking points – Drugs of Dependence | 12 September 2023 | Full Release | | YES |
| 21. | 226 – 231 | Ministerial Brief – MIN2023/00716 Drugs of Dependence law reforms implementation update | 29 September 2023 | Partial Release | Schedule 1, 1.14 Law enforcement | YES |

| | | | | | Schedule 2, 2.2(a)(x) Intergovernmental relations | |
|----------------------------------|-----------|--|------------------|-----------------|---|-----|
| 22. | 232 – 248 | Q&A – Drugs of Dependence (Personal Use) Amendment Act 2022 | 19 October 2023 | Full Release | | YES |
| 23. | 249 – 254 | Talking points – Senate motion regarding Drugs of Dependence (Personal Use) Amendment Bill | 23 October 2023 | Full Release | | YES |
| 24. | 255 – 258 | Question Time Briefs – February 2024 [Out of scope information removed] | 25 January 2024 | Full Release | | YES |
| 25. | 259 – 263 | Ministerial Brief – MIN2024/00089 Population Health - Meeting with Alcohol, Tobacco and Other Drug Association ACT | 26 February 2024 | Partial Release | Schedule 2, 2.2(a)(ii) Privacy | YES |
| 26. | 264 – 266 | Question Time Brief – GBC24/84 Drugs of Dependence (Personal Use) Amendment Act | 5 March 2024 | Full Release | | YES |
| 27. | 267 | FOI Data Request - Cannabis-related emergency department presentations by calendar year, January 2018 to December 2023 | 22 April 2024 | Partial Release | Schedule 2, 2.2(a)(ii) Privacy | YES |
| Total Number of Documents | | | | | | |
| 27 | | | | | | |

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Question and Answer Health Directorate Briefing note

Terminology

The proposed ACT Bill describes the approach being recommended as “legalisation” of cannabis.

Researchers would not necessarily describe the ACT approach as “legalisation” preferring to reserve this term for commercial legalisation of cannabis production and sale, as well as possession/consumption.

This means that research on the potential risks of increased cannabis use needs to be checked under “legalisation” has to be checked for relevance to the ACT context.

What are the main short term health effects of cannabis?

The main short-term effects of cannabis use include intoxication, which may produce anxiety or panic, impair cognition and motor coordination, alter judgment and, in high doses, may also produce paranoia and psychotic symptoms.

Symptoms

What are the main long-term physical health effects of cannabis?

The main long-term effects of cannabis are dependence (addiction), symptoms of chronic bronchitis, and a probable increase in heart attack risk for middle-aged adults.

Cannabis smoke contains similar carcinogens to tobacco smoke, but the evidence that cannabis smoking causes cancer is less clear than for tobacco smoking. A complicating factor for research is that many cannabis users also smoke tobacco.

What about effects on young people?

Evidence suggests that regular cannabis users have worse school outcomes than their peers who don't use cannabis, although some researchers argue this reflects underlying social and personal factors.

It is not clear that cannabis is a ‘gateway’ drug to other illicit drugs, as other underlying factors may cause the relationship between cannabis and other illicit drug use, e.g. mixing with drug using peers, or being brought into contact with drug suppliers.

Can cannabis impair driving?

Cannabis intoxication approximately doubles the risk of motor vehicle accidents. Risks are further increased by combining cannabis with alcohol.

ACT Policing already conducts roadside testing for cannabis use.

Can cannabis cause overdoses?

- Cannabis consumption is not known to directly cause fatal overdoses — it does not suppress breathing like opioids or alcohol.
- Non-fatal overdoses can occur, particularly among naïve users, and result in emergency department presentations.

- The estimated ratio between a lethal dose of cannabis and the average recreational cannabis is more than 1000.
- Cannabis is often detected in pathological testing after overdoses as regular drug users tend to use multiple drugs.
- When combined with alcohol, cannabis's capacity to suppress vomiting may increase the potential lethality of alcohol overdose by via aspiration of vomit (Caulkins et al 2012)

How do the health effects of cannabis compare with other drugs?

Based on current use patterns, alcohol and tobacco still pose much greater harms to individual and public health in Australia than cannabis. Opioids, including pharmaceutical opioids, pose a much greater overdose risk.

Won't permitting cannabis smoking set back decades of anti-smoking campaigning?

From a health perspective, any type of smoking can be harmful to individuals and those around them.

The Bill deliberately doesn't permit public use of cannabis, nor use in front of children. In this way it is intended that any smoking behaviour is not encouraged or normalised.

Will the proposed legislation increase cannabis use?

Caulkins et al (2012) emphasise that there are always elements of unpredictability in cannabis legalisation.

Directly relevant research is limited. Few jurisdictions worldwide have introduced the type of legalisation that is proposed in the ACT, and no jurisdictions have in Australia. The proposed model is similar to Washington DC and Vermont in the United states in proposing legalisation of possession and personal cultivation of small amounts, not of production and sale.

Australia has operated for more than two decades under a harm minimisation model of alcohol and other drug policy which has been more receptive than some other countries to harm reduction approaches including reduction of penalties and diversion for cannabis use, possession and cultivation.

However, research on cannabis decriminalisation does not demonstrate a clear relationship with cannabis use rates.

We cannot definitively say that there will be no change to use, but in the long term, a significant increase in cannabis use in the ACT is not expected.

The ACT largely decriminalised cannabis in the 1990s when Simple Cannabis Offence Notices and Illicit Drug Diversions were introduced. Cannabis use has fallen in the ACT in the years since then.

In 1998, 20 per cent of ACT residents aged 14 and older reported cannabis use in the past 12 months¹, but in 2016 this figure had fallen to 8 per cent². In 1996, 36 per cent of ACT school students said they had ever used cannabis³, but in 2017 this figure had fallen to 15 per cent⁴.

The ACT legalisation approach is very different to commercial legalisation of cannabis production and sale, which has occurred in Canada and several US states.

The proposed ACT legislation represents a middle way between criminalisation of cannabis and full commercial legalisation. Many drug policy researchers believe this represents a reasonable balance between the harms that result from criminalisation and the harms that result from drug consumption.

This legislation is also designed to reflect existing community standards in the ACT.

As part of the legalisation process it will be important to inform the community of the content of the new legislation and the health risks of cannabis to reduce the risk that people will believe that legalisation means that cannabis is harmless.

What impact could this legislation have on health or alcohol and other drug services?

Removing the 'illicit' component of cannabis use contributes to reducing the stigma experienced by those who use it.

The reduction in stigma makes it more likely that people will seek assistance from GPs or alcohol and other drug services should they experience any adverse outcomes from cannabis use, and seek appropriate support if their cannabis use becomes problematic. This is a positive change for those individuals.

As such, it may contribute to increased demand on these services. It will be important to ensure detailed information on cannabis and its effects is available to GPs, who may have increased numbers of patients asking questions or seeking assistance related to cannabis and its effects.

What is the impact of this legislation on the medicinal cannabis scheme?

Recreational cannabis and medicinal cannabis are not the same and are separate issues under legislation. The existing medicinal cannabis scheme will remain in place for those who need individual doses prescribed by an appropriate doctor for a specific condition.

¹ Australian Institute of Health and Welfare (1999). National Drug Strategy Household Survey 1998.

² Australian Institute of Health and Welfare (2017). National Drug Strategy Household Survey 2016.

³ HealthStats ACT. Data sourced from the Australian Secondary School Students Alcohol and Drug Survey. <https://stats.health.act.gov.au/statistics-and-indicators/marijuanacannabis-use-secondary-school-students>

⁴ HealthStats ACT. Data sourced from the Australian Secondary School Students Alcohol and Drug Survey. <https://stats.health.act.gov.au/statistics-and-indicators/marijuanacannabis-use-secondary-school-students>



CHIEF MINISTER'S TALKBACK – HOT ISSUE

Complete and accurate as at: 2 December 2019

ISSUE: Drugs of Dependent (Personal Use) Amendment Act 2019

Talking Points

- The Government acknowledges that cannabis use can have negative impacts on an individual's health and does not condone the use of recreational Cannabis.
- However, at a population level the health impacts of cannabis are limited compared to alcohol and tobacco.
- Cannabis has been calculated by the Australian Institute of Health and Welfare to cause 0.4 per cent of the burden of disease in the ACT. Comparatively, alcohol causes 4.2 per cent and tobacco 5.4 per cent of ACT disease burden.
- The Australian Institute of Health and Welfare has also estimated that 3 per cent or less of the burden of schizophrenia, poisoning, anxiety disorders, road traffic injuries and depressive disorders is attributable to cannabis use.
- There is also little evidence to support the assertion that cannabis use, and therefore harms, will increase from the Government changes to the Drugs of Dependence Act, despite the apparently 'common sense' view that cannabis use ought to increase.
- Cannabis use rates have fallen greatly over time in the ACT even though the ACT pursued measures to decriminalising cannabis through the Simple Cannabis Offence Notice and Illicit Drug Diversion programs.
- In 1998, 20 per cent of ACT residents aged 14 and older reported using cannabis in the past 12 months, but in 2016 only 8 per cent reported past-12-month use.
- Similarly, a report from European Monitoring Centre for Drugs and Drug Addiction has concluded there is no clear relationship between changes in cannabis possession penalties in EU countries and use rates in young people.
- When surveyed in 2016, only 9.4 per cent of Canberrans said they would try cannabis even if it was legal to use.
- Nevertheless, the Government will increase public information on the negative effects of cannabis use to accompany implementation of the legislation.
- The ACT Governments funds non-government alcohol and drug (AOD) services and Canberra Health Services' (CHS) Alcohol and Drug Services to offer a wide range of treatment and support services for people with problematic drug use in the ACT. Assistance is also provided to support the family and friends of people who use drugs.

- The AOD treatment and support services offered in the ACT include:
 - Withdrawal (detoxification);
 - Counselling;
 - Rehabilitation;
 - Support and case management;
 - Information and education;
 - Pharmacotherapy treatment;
 - Needle and syringe programs; and
 - a sobering up facility where people intoxicated with alcohol and/or other drugs can sober up in a safe environment.
- The ACT Government invests more than \$20 million annually in specialist alcohol and other drug treatment and support services.

Background

- In 2017-18 (the latest data available), alcohol was the main drug that of concern that people attended treatment for in the ACT, 42.7 per cent (2,915 closed episodes), followed by amphetamines, 23.8 per cent (1,626 episodes). Cannabis was the main drug of concern in 12.6 per cent (861) of closed episodes.
- Heavier and more regular use of cannabis is associated with higher levels of harm. Of the eight per cent of Canberrans who have used cannabis in the last 12 months most consume it only occasionally. Around 35 per cent of people who have used cannabis in the past 12 months consume cannabis weekly or more.
- Harm Minimisation is the Australian national drug policy approach. It encompasses the 'three pillars' of supply reduction, demand reduction and harm reduction.
- Harm reduction is a pragmatic approach which accepts that drug use will occur despite the best efforts of Governments, and that is therefore legitimate to attempt to reduce harms from drug use that does occur.

Contact Officer: Alan Philp

Ext: 51854

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ACT Health Directorate

To: Minister for Health

Tracking No.: GBC21/375

From: Meg Brighton, Deputy Director-General

CC: Rebecca Cross, Director-General

Subject: Select Committee Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021

Critical Date: 28/07/2021

Critical Reason: To provide you with information for your consideration ahead of your appearance at the elect Committee hearing on 30 July 2021.

- DDG .../.../...

Recommendations

That you:

1. Note the information contained in this brief.

Noted / Please Discuss

Rachel Stephen-Smith MLA/...../.....

Minister's Office Feedback

Background

1. The Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 (Bill) is currently considering the Bill and broader ACT drug policy and programs.

2. The deadline for submissions to the Select Committee Inquiry was 11 June 2021, but the Select Committee has since indicated it is accepting submissions until the end of July 2021. It is at the Select Committee's discretion to publicly release the submissions.
3. To date, 56 submissions have been published progressively on the Select Committee's webpage (including the ACT Government submission), with a further submission withheld for confidentiality reasons. A detailed summary of submissions to date is at [Attachment A](#).
4. The ACT Government submission to the Inquiry reaffirms the Government's commitment to harm minimisation responses to alcohol, tobacco and other drugs and highlights social, health, legal and technical issues for further consideration in relation to the Bill. It also provides the Select Committee with information on the ACT's current illicit drug diversion system and alternative systems, data on illicit drug use in the ACT as well as preliminary data concerning ACT public opinion of illicit drug use. It notes the Government will ensure that any measures adopted are informed by evidence on the effectiveness of such measures in reducing the adverse health, social and economic consequences of drug use.
5. The Select Committee scheduled hearings for 8-9 July 2021, 21 July 2021 and 29-30 July 2021. You are scheduled to appear before the Select Committee on 30 July 2021 between 3pm and 4pm. Short briefs on key issues raised in submissions to support your appearance before the Select Committee, are available at [Attachments B-E](#).

Issues

Drugs of Dependence (Personal Use) Amendment Bill 2021

6. Most publicly available submissions addressed the Bill. Overall, these submissions supported the Bill as part of the Government's harm minimisation approach to alcohol and other drug (AOD) use, but amendments were suggested. Key issues raised were:
 - a. The list of drugs included in the Bill. There were some calls to reduce the number of drugs listed, including from the Australian Federal Police Association (AFPA) which recommended a trial approach to the Bill, beginning with MDMA (ecstasy). However, some stakeholders (such as the Canberra Alliance for Harm Minimisation and Advocacy (CAHMA)) argued that there was a need to expand the list of drugs to match those included in the existing Illicit Drug Diversion Initiative, and to include a 'catch-all' clause to cover analogues of the listed drugs and to future-proof the Bill.
 - b. The personal possession thresholds proposed in the Bill for which a simple drug offence notice would apply. ACT Policing, the AFPA and other stakeholders including the ACT Law Society considered the thresholds should be reduced, to clearly distinguish between personal use and drug trafficking. However, other stakeholders considered the thresholds should be increased to reflect typical

personal drug possession and use in the ACT, for example because individuals may purchase drugs weekly or fortnightly in bulk. Stakeholders also emphasised the need to clarify whether the thresholds are intended to reflect pure weight or mixed weight measurements.

- c. Operational concerns for police, including: testing requirements and resourcing; integration of the proposed changes with the existing diversion system; interaction between ACT and Commonwealth law; application of the legislation to Jervis Bay; treatment of possession of multiple drugs at once; addressing payment defaults; and drug driving testing. Some stakeholders were also concerned about the extent of police discretion to decide who should be diverted from the criminal justice system.
 - d. Calls to remove the s37 *Medicines, Poisons and Therapeutic Goods Act 2008* offence of self-administration of certain drugs, for consistency with the Bill.
 - e. A need for additional treatment service funding to address increased demand for treatment associated with the proposed Bill, which was raised by stakeholders including the AFPA. Many submissions noted the success of similar Portuguese law reforms which were accompanied by additional support for treatment. The Bill does not currently include a mechanism for diversion to treatment so would not necessarily increase treatment demand. However, some stakeholders, such as the Alcohol Tobacco and Other Drug Association ACT (ATODA) suggested information about or a referral to treatment should be provided along with or instead of the SDON fine, which could increase demand. Some submissions, including that of the AFPA, argued diversion to treatment should be mandatory in some cases.
 - f. The likely inequity of imposing a fine for simple drug possession. Stakeholders such as CAHMA, Canberra Community Law and Uniting NSWACT argued that people who use drugs are some of the most marginalised in the ACT community, on whom a fine would have a disproportionate negative impact. The Bill also retains the possibility of imprisonment for failure to pay the fine. These stakeholders suggested removing the fine or providing alternative mechanisms to discharge the penalty, such as community service, attendance at treatment, or payment plans, as in the *Road Transport (General) Act 1999*.
7. Of the 56 submissions publicly available, the submissions which did not support the Bill in any way included those of Drug Free Australia, Mr Bill Stefaniak, the Pharmacy Guild of Australia (ACT Branch) and the NSW Police Force (though some did not comment directly on the Bill). The AFPA does not support the Bill in its current form, preferring a phased approach, beginning with an MDMA (ecstasy) trial accompanied by fixed-site pill testing. They recommend using the trial period to increase investment in treatment ahead of the full rollout of the Bill. The ACT Law Society does not support decriminalisation of methamphetamine (ice) in any amount and does not support decriminalisation of other drugs except in very small amounts.

8. There were also multiple submissions calling for more extensive reforms. For example, CAHMA's first preference is for the Bill to mirror the 2020 cannabis law reforms, depenalising personal possession of a wider range of drugs in specified amounts. One individual provided partial support for the Bill but expressed a preference for legal regulated sale of currently illicit drugs.
9. Submissions also recommended the Government review drug driving laws concurrently with development of the Bill and sought an impairment-based approach instead of the current zero-tolerance approach.

Other AOD policy and program issues

10. In relation to broader drug policy and program issues being considered by the Select Committee, the most common issue raised in the submissions was a concern that AOD treatment and support services are significantly underfunded and unable to meet current demand. This was a broad concern in relation to the full range of services.
11. However, stakeholders also requested additional funding to ensure access to specific types of AOD services or for particular cohorts, including comorbidity services (AOD and mental health), family and carer support services, culturally appropriate services, LGBTIQ+ specific services, methamphetamine specific treatment, nicotine replacement therapy, and services in the Alexander Maconochie Centre, as well as related services like social housing. There was broad support for fixed-site drug testing and a supervised drug consumption room, as well as some support for heroin-assisted treatment or a hydromorphone trial as an alternative to current opioid maintenance therapy medications.
12. While Cabinet approval was recently given to proceed with a fixed-site pill testing pilot, the outcome of the 2021-22 ACT Government Budget will determine length and scope of the trial. Work to consider an appropriate location for the pilot alongside an existing health service continues. Recent NSW Health drug warnings have increased pressure from Pill Testing Australia to fast-track commencement of the fixed-site pill testing pilot.
13. The ACT Medically Supervised Injecting Facility (MSIF) Feasibility Study was publicly released on 25 March 2021. The report delivered by the Burnet Institute concluded that a MSIF was both feasible and appropriate for the ACT. **Schedule 1.6**

14. In submissions, stakeholders such as ATODA emphasised that funding is not balanced between the three pillars of harm minimisation, with supply reduction (which mostly focuses on law enforcement) receiving significantly more funding than demand reduction or harm reduction measures. Submissions also raised concerns about access to services, citing long wait times, particularly for AOD residential rehabilitation, and limited opening hours. Service providers sought increased flexibility in their contracts to allow for adaptation of treatment and support services to meet community need.
15. Stakeholders were also concerned that much of the infrastructure for AOD services is in fair to poor condition and will not support increased capacity without significant further investment. They raised a need to invest further in the workforce, including endorsed prescribers for Opioid Maintenance Therapy, as there is a nationwide shortage of qualified AOD workers, as well as attraction and retention issues.
16. Multiple submissions raised concerns about the capacity of both AOD and mental health (MH) services to treat AOD and MH comorbidities concurrently, and the extent of collaboration and coordination between these services. One stakeholder called for these sectors to be overseen by one Minister.
17. There were multiple submissions from parents of adult children with severe AOD and MH disorders who called for involuntary AOD treatment like existing involuntary MH treatment schemes. The Inquiry hearing on 8 July focused on the needs of these parents and children. This is a complex issue which would require detailed consideration.
18. Other key points raised in relation to broader AOD policy and programs include:
 - a. Need for improved data collection and use to inform AOD policy and planning. Some stakeholders called for the Drug and Alcohol Service Planning Model to be updated to support this.
 - b. Desire for an ACT-specific Drug Strategy in addition to an Action Plan.
 - c. Concerns that drug education in ACT schools is ineffective because it is not sufficiently evidence-based and is not delivered by experts.

Next steps

19. Points raised in relation to the Bill are being considered by the Government Working Group on the Bill, to inform amendments to the Bill to be proposed by the Government.
20. Points raised in relation to the broader AOD treatment system will inform AOD Policy strategic planning and co-design in 2021, which will in turn inform commissioning of AOD services and development of the next Drug Strategy Action Plan.

Clarifications to ACT Government submission

21. Stakeholders have raised two points of clarification to the ACT Government Submission to the Inquiry. Page 4 of the ACT Government submission states ‘the Illicit Drug Offence Notice program was introduced in 2001’. This is intended to state ‘the Illicit Drug Diversion Initiative was introduced in 2001’. Page 18 of the ACT Government submission states ‘In the ACT there is no offence of illicit drug consumption’. While this is correct, section 37 of the *Medicines, Poisons and Therapeutic Goods Act 2008* creates an offence of self-administration of certain drugs.

Financial Implications

22. Based on the submissions, the Select Committee may make recommendations with significant financial implications, for consideration as part of the Government response to the Inquiry, commissioning of AOD services and development of the next ACT Drug Strategy Action Plan.

Consultation

Internal

23. Preventive and Population Health (PPH) consulted Policy Partnerships and Programs and the Health Protection Service, in preparing this briefing package.

Cross Directorate

24. PPH is continuing to meet with the Government Working Group on the Bill, which includes Justice and Community Safety Directorate (JaCSD), Chief Minister Treasury and Economic Development Directorate, Health Protection Service, Canberra Health Services (CHS) and ACT Policing. This engagement has informed this briefing.
25. PPH sought input from CHS to inform this briefing package.

External

26. PPH has not consulted external stakeholders in preparing this briefing package. A wide range of external stakeholders made submissions to the Select Committee Inquiry.

Work Health and Safety

27. Nil response.

Benefits/Sensitivities

28. The Inquiry will provide a timely contribution to the next ACT Drug Strategy Action Plan and help to inform the Government’s further consideration of the Bill.
29. Based on the submissions, ongoing criticism of the Government is likely to focus on perceived under-funding of AOD treatment and support services. ACTHD strategic planning and co-design with the AOD sector and community in 2021 will focus on determining priorities for future Budget processes.
30. While there is broad community support for a harm minimisation approach to AOD use, including diversion from the criminal justice system, the submissions and media

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coverage have shown there are pockets of significant opposition to the Bill in the ACT community. For example, AFPA expressed its opposition to the Bill via radio, and Senator Zed Seselja's Facebook page posted in opposition to the Bill.

Communications, media and engagement implications

31. The Inquiry and submissions have received substantial media coverage, mostly focusing on the Bill. PPH is engaging with the Senior Director, Media, and the Senior Director, Strategic Communications, to develop a communications strategy for implementation of the Bill, and will provide talking points and other communications support as required.

Signatory Name: Meg Brighton, Deputy Director-General Phone: x46240

Action Officer: Alan Philp, Executive Group Manager, Preventive and Population Health Phone: x51854

Attachments

| Attachment | Title |
|--------------|--|
| Attachment A | Detailed summary of submissions |
| Attachment B | Hearing briefs – list |
| Attachment C | Hearing brief – overarching |
| Attachment D | Hearing brief – Mental Health and AOD Comorbidity |
| Attachment E | Hearing brief – Involuntary AOD treatment |
| Attachment F | Hearing brief – AOD services |
| Attachment G | ACT Government submission to the Select Committee Inquiry |
| Attachment H | Answer to Question on Notice – Tobacco |
| Attachment I | Answer to Question on Notice – AOD residential rehabilitation beds |
| Attachment J | ACTHD input to Question on Notice response – feasibility work including: Aboriginal and Torres Strait Islander AOD residential rehabilitation; and medically supervised injecting facility |
| Attachment K | Select Committee members – background information |
| Attachment L | National Drug Strategy Household Survey 2019 – ACT fact sheet |

Schedule 1.6

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ARRANGEMENTS BRIEF

| | |
|--------------------------------|---|
| FUNCTION: | Ministerial forum on proposed Government amendments to the Drugs of Dependence (Personal Use) Amendment Bill 2021 |
| VENUE: | Online via Webex |
| HOST: | Name: Fiona Barbaro, A/g EGM Population Health Mobile: |
| DAY: | Wednesday |
| DATE: | 15 June 2022 |
| TIME: | 11.30 am |
| TIME COMMITMENT: | 1 hour |
| YOUR ROLE: | Speaking on the Government approach to amendments to the Drugs of Dependence (Personal Use) Amendment Bill 2021, with question and answer session. |
| ACCOMPANYING ATTENDEES: | Officials from the Population Health Division will also be in attendance online, including Megan Arnold, A/g Senior Director, Alcohol and Other Drug Policy. |
| AUDIENCE: | Representatives from non-government organisations in the alcohol and other drug treatment and support service sector and other related sectors, as well as others with an interest in AOD policy who made submissions to the Select Committee Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021. |
| PAST INVOLVEMENT: | You have had recent meetings with some of these stakeholders on the Bill. |
| SENSITIVITIES: | Key concerns raised by the AOD sector in relation to the Bill include: <ul style="list-style-type: none"> • The personal possession limits proposed in the Private Member's Bill are too low and will not cover, for example, those doing 'weekly shopping' • There should be a 'catch-all' provision so all illicit and illicitly-used drugs are covered by the reforms • Alternatives to the simple drug offence notice fine are needed to avoid further disadvantaging people who use drugs |
| ORDER OF CEREMONIES | 11.35 am: Ms Barbaro introduces you 11.40 am: You speak 11.50 am: You invite questions/comments 12.30 pm: Event concludes |

**SPEAKING NOTES FOR THE MINISTERIAL FORUM ON THE
GOVERNMENT AMENDMENTS TO THE DRUGS OF DEPENDENCE
(PERSONAL USE) AMENDMENT BILL 2021**

**11.30 AM WEDNESDAY 15 JUNE 2022
ONLINE**

Acknowledgements

Traditional owners: I acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

Thank you all for coming today. I was pleased to present the Government Response to the Select Committee Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021 to the Legislative Assembly last week, as part of a broader update on the Government's nation-leading harm minimisation approach to alcohol and other drugs.

The Bill, a Private Member's Bill, proposed further decriminalisation of 11 illicit drugs (including two forms of cannabis). I note the ACT has introduced several personal drug possession decriminalisation measures in the past, including the Simple Cannabis Offence Notice in 1989, diversion to drug education in 2001, and lifting of penalties for adult cannabis personal possession in 2020.

The Government Response to the Select Committee Inquiry highlights the Government's intention to bring forward amendments to the Bill, to address recommendations from the Select Committee, community views and to ensure the Bill can achieve its harm minimisation aims.

The Government has undertaken detailed consideration of the Bill, including social, economic, and operational considerations. I would like to take this opportunity to outline the considerations underlying the proposed amendments and the plan going forward. I would also like to thank you for your input through the Select Committee and a range of other discussions, which has helped to inform this work. I appreciate the robust feedback, which has been considered by ACT Health Directorate and stakeholders across Government operating in this complex policy space. We aim to take a balanced step towards further harm minimisation, with opportunities for consideration of further changes in the future.

The key goal with the Bill is to reduce the likelihood that someone is formally charged, or experiences a criminal record with lasting impact on their lives, solely as a result of drug possession. I will shortly run through a range of specifics intended to be covered in Government amendments, but the key is that discharging either a Simple Drug Offence Notice or attending a diversion information and education session provides a workable, practical system that doesn't include any formal engagement with the Courts, nor further contact with Police. The Bill itself, but also the conversations surrounding its implementation, are intended to foster the view that drug use should be a health issue, rather than a criminal one. Through these conversations we hope to further erode stigma around drug use, and make it easier for people who require help to seek it without fear, or a feeling of discrimination.

Through your submissions to the inquiry, and a range of conversations with my office or the health Directorate, I'm aware there are many questions, and some concerns about the Bill, and Government amendments, so I'll run through a range of items now, and we have left plenty of time for questions and discussion in the session.

List of drugs

The Private Member's Bill proposed a list of ten drugs that would be eligible for a simple drug offence notice and maximum penalty of one penalty unit. That list included (MDMA ('ecstasy'), amphetamine, cannabis, cocaine, heroin, lysergic acid, lysergide (LSD), methamphetamine, psilocybin and methadone. The Government proposes to

remove methadone from this list, as it is regulated as a pharmaceutical drug, unlike the other drugs on the list. As a legitimate treatment, changing regulation of methadone could undermine drug treatment, rather than promote it, as intended under the Bill. I note the list of drugs eligible for a simple drug offence notice and maximum penalty of one penalty unit still captures the drugs which account for the large majority of possession apprehensions and diversions in the ACT.

'Catch-all' clause

I also acknowledge the calls made to include a 'catch-all' clause so that all drugs can be eligible for a simple drug offence notice and maximum penalty of one penalty unit. The Government does not support a catch-all clause. This approach would have significant risks because each new drug proposed for a small quantity amount requires careful consideration and many analogues are little understood. The Government prefers a staged approach to potential inclusion of additional drugs. The list of eligible drugs is intended to be moved from the Bill to regulation to make it easier to amend in future, including in response to changing drug use trends.

Drug thresholds

On the thresholds for the list of drugs, I'd like to acknowledge the concern about the proposal in the Private Member's Bill to change the current single tier of drug possession offences to two tiers. The Government amendments will propose keeping this two-tier structure, as it facilitates the very substantial reduction in penalties in the lower tier proposed by the Private Member's Bill, including the complete removal of a potential prison sentence. This approach can be likened to limits used in other areas of the law, for example, speeding, where penalties differ depending on how many kilometres above the speed limit someone is driving.

The amount of a drug a person has in their possession will be determined by precise measurement in a laboratory, not by police officers on the spot. I also note that there is no change to the trafficable quantity amounts which form the upper limit of larger personal purchases, so for people whose purchases fall into this category, things will

remain much the same. However, I'm pleased to say the Government does propose to reduce the maximum prison sentence for these larger purchases, from two years to six months.

The Government will also propose changes to the small quantity limits set out in the Private Member's Bill. These changes have been informed by drug user self-reported consumption patterns, including heavier consumption, recorded in the ACT and national Illicit Drug Reporting System (IDRS) and Ecstasy and Related Drugs Reporting System (EDRS) reports and evidence provided to the Select Committee Inquiry by the University of New South Wales Drug Policy Modelling Program. ACT Health Directorate also consulted on the small quantity amounts with Canberra Health Services' Alcohol and Drug Service, ACT Policing, and ACT Government Analytical Laboratory.

I note that self-reported drug use is an estimate of the actual quantity consumed, the quantity of an active illicit drug contained in a compound is variable, and levels of consumption and patterns of drug use varies across individuals. Therefore, any quantity limit proposed by regulation is an estimate and cannot account for all individual patterns of use.

Compared to the originally proposed 'personal possession limits', the small quantity amounts in the Government amendments may be increased, reduced, or stay the same, depending on the specific drug. A key aim was to include within the small quantity amounts the amounts of drug use by most people who use these drugs for 1-2 heavy sessions or 1-2 days of use in most cases, allowing for the fact that use patterns vary between individuals. The Government also proposes to introduce discrete dose units, such as a limit for possessing a number of tablets where appropriate, will be proposed for suitable drugs to help people understand their position under the law better. These changes will improve consistency of the reforms across different drugs and help to ensure the law is clear for people who use drugs and those involved in enforcement.

Alternatives to the SDON fine

Many concerns have been raised regarding alternatives to fines, and we note the concerns regarding fines for our most vulnerable community members. We have extensively considered the provision of alternatives to the SDON fine, to ensure those who are unable to pay the fine are not disadvantaged. I note we have also received feedback that there will be some people who use drugs who would prefer to pay the fine. The proposed Government amendments will also ensure that people issued with an SDON can attend the existing illicit drug diversion program run by Canberra Health Services, rather than paying the fine. Changes to provide other options, such as payment in instalments, will be better undertaken at a later stage as part of a broader review of ACT fine payment options.

The Government also proposes to legislate the existing illicit drug diversion program, supported by police guidelines, raising the profile of this important program and providing an opportunity to review the guidelines in collaboration with police and other stakeholders. We also propose to ensure that police officers provide treatment information when a simple drug offence notice is issued. ACT Policing supports this approach.

Other amendments

Other proposed amendments will support implementation, monitoring and review of the reforms. The Government proposes to legislate a review of the changes after three years of operation, to ensure they are working as intended and provide an opportunity for consideration of further changes. We support the establishment of an advisory group for the changes. The Government will also propose an extended 12-month implementation period for the Bill to allow suitable transition, including training for police. This is supported by ACT Policing.

We will work closely with many of you to prepare training and communications programs for the Bill, as well as public facing information on the goals of the amendments. Public facing information will be developed in consultation with ACT

Policing on eligibility for the simple drug offence notice and the illicit drug diversion program.

I would like to thank you all again for your contributions to this process and look forward to continuing to work with you on these significant reforms, to ensure the best outcome for the ACT community.

We are working on getting amendments finalised as soon as possible, so we'd welcome your feedback and questions, both now directly with me, or through the Health Directorate this week.

ENDS

2022

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

DRUGS OF DEPENDENCE (PERSONAL USE) AMENDMENT BILL 2021

SECOND DEBATE SPEECH

**Rachel Stephen-Smith MLA
Minister for Health
August 2022**

Madam Speaker, I rise in support of the Drugs of Dependence (Personal Use) Amendment Bill 2021.

This Bill is a Private Member's Bill originally introduced by my colleague Mr Pettersson into the Assembly on 11 February 2021.

As you will recall Madam Speaker, the Bill was referred to a Select Committee which tabled its recommendations at the end of November 2021, and the Government replied to these in June this year.

The Government is supporting the Private Member's Bill and today I am tabling Government amendments to help it better meet the aims to ensure a health-focused response to illicit drug possession and increase diversion away from the criminal justice system.

The proposed accompanying changes to the *Drugs of Dependence Regulation 2009* will support these changes.

The Bill seeks to reduce the penalties for personal possession of some of the more commonly used illicit drugs in Canberra, in line with modern community expectations.

The Government is proposing sensible amendments to ensure that the Bill can be best implemented to achieve its goals—that is, supporting people who have health needs to access the care that they need, while at the same time, reducing the stigma associated with illicit drug use to facilitate that access.

The Government does not condone drug use. It remains risky and dangerous to consume illicit drugs.

However, threatening people with heavy punishments has not worked in deterring drug use.

I believe that this Bill strikes the right balance in reducing harm from the use illicit drugs. Canberrans will have much less need to fear being sent to prison because of the result of a health condition. They will no longer fear becoming financially crippled by a heavy fine or facing a prison sentence. This will support people to engage with health services and consider diversion to obtain access to the support they need

through drug counselling or support services. At the very least it will provide people with the option of seeking support.

The bill also strikes the right balance to avoid the risks of inadvertently create loopholes for drug dealers, and enabling police to focus on the real criminals. That is those people who deal or traffic drugs in our community.

The Bill introduces small quantity possession amounts for eight drugs in addition to the existing threshold for cannabis.

The maximum sentence that will be able to be imposed by a court for possession at, or below, these small quantities offence will be one penalty unit. Currently this amounts to a \$160 fine.

People apprehended by police with small quantity amounts will no longer be at risk of being imprisoned.

They will also be eligible for diversion as an alternative to going to Court using a \$100 Simple Drug Offence Notice or through diversion to assessment, drug education and treatment via the Illicit Drug Diversion program.

Drug diversion is a more efficient use of public money than taking people to court to prosecute them for a minor drug offence.

For people with larger personal possession amounts, the Bill also reduces the maximum prison sentence from two years to six months. Two years is a disproportionate sentence by modern standards.

As I have said before, our central guiding principle is that drug use is fundamentally a health issue, and that, in most instances, contact with the criminal justice system for drug possession can do more harm than good.

This Bill will mean fewer people get a criminal record for a minor drug offence. It will limit the damage to the life prospects of Canberrans that can occur through a criminal conviction for a minor drug offence.

It is vital for equality before the law that the Bill provides equivalent diversion options for drugs likely to be taken by people who experience disadvantage – such as methamphetamine and heroin – as well drugs likely to be consumed by more advantaged users – such as ecstasy and cocaine.

This Bill supports the Human Rights of people who use drugs by providing an additional option for diversion away from the criminal justice system.

We are not being reckless with this Bill. We have listened to opinions from both sides of the debate and considered the relevant factors.

We have considered evidence of drug consumption patterns and have proposed changes to the original Bill to make the equivalent number of doses across different drug types more consistent.

We are proposing introducing discrete dose units for some drugs to make the law easier to understand for consumers, as well as clarifying where mixed and pure weights are being referred to.

We have listened to scientific advice that applying a 'catch-all' clause to small quantity amounts for analogue and new drugs would pose an unacceptable risk.

The Government has listened to feedback from police that very large reductions in penalties up to the current trafficable quantities could inadvertently facilitate drug dealing. We have therefore retained the concept in Mr Pettersson's Bill of two tiers of possession offences.

We are also proposing an amendment to close a potential drug dealing loophole by limiting the number of Simple Drug Offence Notices a person can get if they have multiple drugs in their possession at one time.

As a result of the media coverage and community commentary on this Bill is important for me to clarify what it does not do.

This Bill does not change the penalties for producing illicit drugs or dealing them.

It does not change the trafficable quantities for illicit drugs in the ACT.

It does not change laws about drug driving or in any way reduce the penalties for drug driving.

It does not affect police powers to charge people with offences committed at the same time as drug possession offences or under the influence of drugs.

Drug use and harms do not inevitably rise after penalties are reduced. There are many other factors in play.

If we think of the ACT's experience with removing adult penalties for cannabis in January 2020, wastewater analysis did not show an increase in February 2020, and there were no more emergency department attendances in the following 12 months.

However, we are not complacent about the outcomes. We will monitor and review and review the implementation of the legislation.

For this purpose, we are also proposing a review following two years with these changes in place.

We are also proposing a twelve-month implementation period to ensure that we get this right. We will work with ACT Policing and with stakeholders to make sure this legislation is well understood by both the community and police officers.

We have proposed that the list of drugs that is eligible for reduced penalties and increased diversion is included in regulation so that it is more flexible.

The Government will take a staged approach to bringing further drugs into the scope of this regulation in future.

Madam Speaker, this Bill is a big step forward for drug law reform both in Canberra, and in Australia more generally.

The ACT government has been nation leading in its harm minimisation approach, and of course, working with Directions Health Services and Pill Testing Australia, opened Australia's first pilot of a fixed site pill testing facility on 21 July 2022.

I take this opportunity to thank Mr Pettersson for proposing this Bill, and the Select Committee for its inquiry report and all those who provided submissions to this inquiry.

I would again like to thank all of those who are involved in alcohol and other drug and related policy and programs in the ACT for their substantial, ongoing contributions to the ACT's overarching harm minimisation approach.

My hope is that this will help to reduce the stigma experienced by people who use illicit drugs, encouraging more people to come forward and receive support.

I am proud to support the passage of this Bill in this Assembly today and look forward to debating a number of amendments to ensure that its intent is achieved in the best possible way.

**DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021
SPEAKING NOTES FOR GOVERNMENT AMENDMENTS**

Government Amendments 1 – 5

1 – Long title

after

Drugs of Dependence Act 1989

insert

and the Drugs of Dependence Regulation 2009

2 – Proposed new part 1 heading

Page 2, line 1—

before clause 1, insert

Part 1 Preliminary

3 – Clause 2

Page 2, line 5—

omit

on 1 February 2022

substitute

12 months after its notification day

4 – Clause 3

Page 2, line 9—

after

Drugs of Dependence Act 1989

insert

and the Drugs of Dependence Regulation 2009

5 – Proposed new part 2 heading

Page 2, line 9—

insert

Part 2 Drugs of Dependence Act 1989

Speaking Notes:

Amendments 1 and 4 reflect that the Bill amends the *Drugs of Dependence Regulation 2009* in addition to the *Drugs of Dependence Act 1989*.

Amendment 2 creates a new Part 1 for the Bill, dealing with preliminary matters.

Amendment 3 provides that the enacted Bill commences 12 months after its notification day. This change will support implementation of these significant reforms, including allowing time for police training and review of administrative processes.

Amendment 5 creates a new Part 2 for the Bill, which sets out amendments to the *Drugs of Dependence Act 1989*.

**DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021
SPEAKING NOTES FOR GOVERNMENT AMENDMENTS**

Government Amendment 6

Proposed new clause 3A

Page 2, line 9—

insert

3A Offences against Act—application of Criminal Code etc

Section 4, note 1, new dot points

insert

- *section 169 (Possessing drugs of dependence)*
- *section 171AAD (Possessing multiple small quantities of different kinds of relevant substances)*

Speaking notes:

This amendment provides that Chapter 2 of the *Criminal Code 2002* applies to sections 169 and 171AAD of the *Drugs of Dependence Act 1989*.

That chapter sets out the general principles of criminal responsibility, including burdens of proof and general defences, and defines terms used for offences to which the Code applies such as ‘conduct’, ‘intention’, ‘recklessness’ and ‘strict liability’.

This change aligns sections 169 and 171AAD with other offences in the *Drugs of Dependence Act 1989*.

**DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021
SPEAKING NOTES FOR GOVERNMENT AMENDMENTS**

Government Amendment 7

Clause 4

Page 2, line 10—

omit clause 4, substitute

4 Sections 169 and 171

substitute

169 Possessing drugs of dependence

(1) A person commits an offence if—

(a) the person possesses a drug of dependence; and

(b) the quantity of the drug is not more than a small quantity for the drug.

Maximum penalty: 1 penalty unit.

(2) A person commits an offence if—

(a) the person possesses a drug of dependence; and

(b) either—

(i) the quantity of the drug is more than a small quantity for the drug; or

(ii) no small quantity is prescribed for the drug.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) This section does not apply if the person is authorised under the

Medicines, Poisons and Therapeutic Goods Act 2008, or another territory law, to possess the drug of dependence.

171 Possessing prohibited substances

(1) A person commits an offence if—

(a) the person possesses a prohibited substance; and

(b) the quantity of the substance is not more than a small quantity for the substance.

Maximum penalty: 1 penalty unit.

(2) A person commits an offence if—

(a) the person possesses a prohibited substance; and

(b) either—

(i) the quantity of the substance is more than a small quantity for the substance; or

(ii) no small quantity is prescribed for the substance.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) This section does not apply if the person is authorised under the

Medicines, Poisons and Therapeutic Goods Act 2008, or another territory law, to possess the prohibited substance.

(4) In this section:

prohibited substance does not include cannabis.

**DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021
SPEAKING NOTES FOR GOVERNMENT AMENDMENTS**

Speaking notes:

This amendment establishes an offence, under subsection 169(1), where a person possesses not more than a small quantity of a drug of dependence, with a maximum penalty of 1 penalty unit. This significantly reduces the current penalty which is 50 penalty units and 2 years imprisonment, or both.

The term 'personal possession limit' used in the Private Member's Bill is changed to 'small quantity', for consistency with terminology elsewhere in the *Drugs of Dependence Act*. The offence applies for possession of amounts not more than the small quantity limit, rather than for possession of amounts below that limit, for consistency with limits in other areas of legislation, for example traffic speed limits.

This amendment also establishes an offence, under subsection 169(2), where a person possesses a drug of dependence and there is no small quantity prescribed for the drug, or the person possesses more than a small quantity. This has a maximum penalty of 50 penalty units, imprisonment for 6 months or both. The penalty is reduced from 50 penalty units, 2 years imprisonment or both, for closer alignment with the Government's harm minimisation approach to drug use and general penalties principles. This offence applies for possession of amounts above the small quantity limit of a drug, rather than at the small quantity limit or above (as proposed by the Private Member's Bill), for consistency with other areas of legislation.

The list of drugs with prescribed small quantities has been moved to the *Drugs of Dependence Regulation*, for consistency with other areas of legislation. This will also facilitate any future changes to the list as required.

These changes are replicated for possession of not more than a small quantity of a prohibited substance in subsection 171(1), or where there is no small quantity prescribed for a prohibited substance and the person possesses more than a small quantity in subsection 171(2).

The offences covered in this amendment do not apply if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another territory law, to possess the drug of dependence.

**DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021
SPEAKING NOTES FOR GOVERNMENT AMENDMENTS**

Government Amendment 8

Clause 5

Page 5, line 1—

omit clause 5, substitute

5 Possessing cannabis

Section 171AA (1) and (2)

substitute

(1) A person commits an offence if the person possesses not more than a small quantity of cannabis.

Maximum penalty: 1 penalty unit.

(2) A person commits an offence if the person possesses more than a small quantity of cannabis.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Speaking notes:

This amendment establishes an offence where a person possesses not more than a small quantity of cannabis, with a maximum penalty of 1 penalty unit. The current penalty being 50 penalty units, 2 years imprisonment, or both. This subsection does not apply where the person in possession of the small quantity of cannabis is aged 18 or over and possesses the cannabis in the ACT. This retains the changes made by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* to decriminalise adult possession of small amounts of cannabis.

The new subsection 171AA(2) establishes an offence where a person possesses more than a small quantity of cannabis. The maximum penalty for the offence under subsection 171AA(2) is 50 penalty units, 6 months imprisonment or both.

These amendments align with the changes for the offences in subsections 169(1), 169(2), 171(1) and 171(2) above, in relation to the term 'small quantity', the possession amounts for these offences, and the maximum penalties for possession of amounts above the small quantity threshold.

**DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021
SPEAKING NOTES FOR GOVERNMENT AMENDMENTS**

Government Amendment 9

Clauses 7-12

Page 5, line 13—

omit clauses 7 to 12, substitute

7 New section 171AAD

insert

171AAD Possessing multiple small quantities of different kinds of relevant substances

(1) A person commits an offence if—

- (a) the person possesses 3 or more different kinds of relevant substance; and
- (b) the quantity of each substance is not more than the small quantity for the substance; and
- (c) the total of the small quantity fractions for each substance is more than 2.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note Other offences under the Criminal Code, ch 6 (Serious drug offences) may apply in relation to a person in possession of 2 or more kinds of controlled drugs, controlled precursors and controlled plants.

(2) In this section:

relevant substance—

- (a) for a person who is 18 years old or older means any of the following—
 - (i) a drug of dependence for which a small quantity is prescribed;
 - (ii) a prohibited substance for which a small quantity is prescribed;
- (b) for a person who is under 18 years old means any of the following—
 - (i) a drug of dependence for which a small quantity is prescribed;
 - (ii) a prohibited substance for which a small quantity is prescribed;
 - (iii) cannabis for which a small quantity is prescribed.

small quantity fraction, for a relevant substance a person possesses, means—

the actual quantity of the relevant substance

the small quantity for the relevant substance

8 Section 171A

substitute

171A Offence notices

(1) If a police officer believes on reasonable grounds that a person has committed a simple drug offence, the police officer may serve an offence notice on the person.

(2) If an offence notice is served on a child and the police officer serving the notice believes on reasonable grounds that the child is living with a person with parental responsibility for the child, the police officer must serve a copy of the notice on the person with parental responsibility.

(3) An offence notice must—

- (a) specify the nature of the alleged simple drug offence to which the notice relates; and

**DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021**

SPEAKING NOTES FOR GOVERNMENT AMENDMENTS

- (b) specify the date and time when, and place where, the simple drug offence is alleged to have been committed; and
- (c) state that no further action will be taken in relation to the alleged simple drug offence if the alleged offender—
- (i) pays the prescribed penalty for the alleged offence within 60 days after the date of service of the notice; or
 - (ii) satisfies the attendance requirements of an approved drug diversion program within 60 days after the date of service of the notice; and
- (d) specify details of the following:
- (i) for payment of the penalty—the amount of the penalty, how the penalty may be paid and the place where payment may be made;
 - (ii) for attendance at a drug diversion program—where and how to satisfy the attendance requirements of the program; and
- (e) for a notice alleging a simple drug offence involving cannabis state that—
- (i) unless a court orders otherwise, the government analyst may, under section 193C (Destruction of cannabis without court order), destroy seized cannabis without a court order; and
 - (ii) the alleged offender may apply to the Magistrates Court, under section 193D (Order for preservation of cannabis), for an order for the preservation of cannabis to which the alleged simple drug offence relates; and
- (f) contain any other particulars prescribed by regulation.
- (4) If the alleged offender pays the penalty in accordance with subsection (3) (d) (i), or satisfies the attendance requirements in accordance with subsection (3) (d) (ii)—
- (a) any liability of the person in relation to the alleged simple drug offence is discharged; and
 - (b) no further proceeding may be taken in relation to the alleged simple drug offence; and
 - (c) the person must not be regarded as having been convicted of the alleged simple drug offence.
- (5) Except as provided in subsection (4), this section does not affect the institution or prosecution of a proceeding for a simple drug offence.
- (6) Any substance, equipment or object seized under any Act in connection with the alleged simple drug offence that would have been liable to forfeiture in the event of a conviction is forfeited to the Territory on—
- (a) payment of the penalty in accordance with subsection (3) (d) (i);
- or
- (b) satisfying the attendance requirements of the approved drug diversion program in accordance with subsection (3) (d) (ii).
- (7) In this section:
- approved drug diversion program* means a program approved under section 171BB.
- attendance requirements*, for an approved drug diversion program, means—
- (a) attending the assessment session of the program; and
 - (b) attending any other part of the program that the person is

**DRUGS OF DEPENDENCE (PERSONAL USE)
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required to attend after the assessment session is completed; and
(c) complying with all reasonable directions given in relation to the program.
child means a person who is under 18 years old on the date of the alleged offence.

person with parental responsibility, for a child—means a person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2.

simple drug offence means an offence against any of the following:

- (a) section 162 (1);
- (b) section 169 (1);
- (c) section 171 (1);
- (d) section 171AA (1).

Speaking notes:

New section 171AAD establishes a new offence where a person possesses multiple small quantities of different kinds of relevant substances.

It provides that where a person possesses 3 or more different kinds of relevant substance, the quantity of each substance is not more than the small quantity for the substance, and the total of the small quantity fractions for each substance is more than 2, they would be eligible for a maximum penalty of 50 penalty units and/or 6 months' imprisonment, rather than for multiple simple drug offence notices.

The small quantity fraction is equal to the actual quantity of the drug the person possesses divided by the small quantity amount for that drug.

This amendment reflects that where a person is carrying small quantities of more than two drugs, a simple drug offence notice is a less appropriate response than routine possession penalties. It also increases consistency with the *Criminal Code 2002*, chapter 6 (serious drug offences), particularly section 631.

Other offences under the *Criminal Code 2002*, chapter 6 (Serious drug offences) may apply in relation to a person in possession of 2 or more kinds of controlled drugs, controlled precursors and controlled plants.

For persons aged under 18, this provision applies to small quantities of cannabis, as well as drugs of dependence and prohibited substances for which a small quantity is prescribed in the *Drugs of Dependence Regulation 2009*. For those aged 18 and over, this provision applies only to drugs of dependence and prohibited substances for which a small quantity is prescribed in the *Drugs of Dependence Regulation 2009*, not to cannabis, for consistency with recent cannabis legislative changes.

The new section 171A retains the proposed new simple drug offence notice, with minor changes to the list of drugs included in the Private Member's Bill. It also updates terminology in relation to parental responsibility in subsection 171A(2) in line with other legislation, including the *Children and Young People Act 2008*.

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A police officer may serve an offence notice on a person where they believe on reasonable grounds that a person has committed a simple drug offence. Police may still divert directly to the illicit drug diversion program or prosecute for the alleged offence instead of issuing an offence notice.

The new section 171A sets out the information that an offence notice must include. Completion of the requirements of the drug diversion program or payment of the prescribed penalty within 60 days after the date of service of the offence notice means the liability of the person for the alleged simple drug offence is discharged, no further proceedings may be brought, and the person is not taken to have been convicted for the offence.

People who receive a simple drug offence notice will be able to choose whether to pay the fine or attend a drug diversion program that is approved under new section 171BB. This change will ensure that those who are unable or unwilling to pay the fine have an alternative option and thereby minimise the risk that those in lower socioeconomic groups are prosecuted for simple drug offences after failing to pay the fine.

The existing illicit drug diversion program is health-focused. Providing these options for diversion away from the criminal justice system for simple drug offences aligns with the intent of the PMB and the Government's overall harm minimisation approach to alcohol and other drug policy.

An offence notice is available for possession of not more than a small quantity of certain drugs of dependence (subsection 169(1)), prohibited substances (subsection 171(1)) or cannabis (subsection 171AA(1)), or cultivation of one or two cannabis plants by a person aged under 18 years (section 162).

The prescribed penalty for a simple drug offence has been moved to the *Drugs of Dependence Regulation 2009* to align with other legislation and to facilitate adjustments in the future if necessary.

**DRUGS OF DEPENDENCE (PERSONAL USE)
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Government Amendment 10

Proposed new clause 12A

Page 6, line 20—

insert

12A New section 171BB

in part 10, insert

171BB Drug diversion program

(1) The Minister may approve a drug diversion program for the assessment and treatment of people who are found in possession of drugs of dependence or prohibited substances.

(2) An approval is a notifiable instrument.

Speaking notes:

This amendment provides that the Minister may approve, by notifiable instrument, a drug diversion program for the assessment and treatment of people found in possession of drugs of dependence or prohibited substances.

This change supports new section 171A in relation to providing the option of discharging liability for an alleged simple drug offence through attendance at an approved drug diversion program. It raises the profile of the existing illicit drug diversion program as an alternative option to the payment of a fine.

**DRUGS OF DEPENDENCE (PERSONAL USE)
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Government Amendment 11

Proposed new clause 12B

Page 6, line 20—

insert

12B New section 205B

insert

205B Review of amendments related to personal use of certain drugs etc

- (1) The Minister must review the operation of the amendments of this Act made by the *Drugs of Dependence (Personal Use) Amendment Act 2021* as soon as practicable after the end of their 2nd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 4 years after the day it commences.

Speaking notes:

This amendment provides that the Minister must review the operation of the amendments made by the enacted Drugs of Dependence (Personal Use) Amendment Bill 2021 as soon as practicable after the end of their second year of operation, and table a report of the review in the Legislative Assembly within six months after the commencement of the review.

This new provision mirrors the existing section 205A of the *Drugs of Dependence Act 1989*, which provides for review of the amendments made by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*, except that the proposed review period is shorter. It will ensure that the legislation is fit for purpose and has not had unintended consequences.

**DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021
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Government Amendment 12

Clause 13

Page 7, line 1—

omit clause 13, substitute

13 Dictionary, new definition of small quantity

insert

small quantity, for a drug of dependence or a prohibited substance, means a quantity of the drug or substance that is not more than the quantity prescribed by regulation.

Speaking notes:

This amendment inserts a new definition of ‘small quantity’ of a drug of dependence or prohibited substance into the Dictionary of the *Drugs of Dependence Act 1989*. It provides that a small quantity is a quantity that is not more than the quantity prescribed by regulation.

The term ‘small quantity’ has been chosen instead of ‘personal possession limit’ to reflect the purpose of the Private Member’s Bill more closely, align with terminology used elsewhere in the *Drugs of Dependence Act 1989*, and prevent confusion. Under ACT law, personal possession penalties apply up to the trafficable quantity for the individual drug as indicated in the *Criminal Code Regulation 2005*, not only for possession of the newly defined ‘small quantities’ of specific drugs.

A small quantity has been defined as an amount *not more than* the prescribed small quantity limit whereas the Primate Member’s Bill refers to possession of amounts *below* that limit. This change provides for consistency with limits in other areas of legislation.

**DRUGS OF DEPENDENCE (PERSONAL USE)
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Government Amendment 13**Proposed new part 3****Page 7, line 4—***insert***Part 3 Drugs of Dependence Regulation 2009****14 New section 3A***insert*

3A Offence notice penalty—Act, s 171A (3) (c) (i)

The prescribed penalty is \$100.

15 New section 6

6 Small quantity—Act, dict, def small quantity

(1) For the Act—

(a) the small quantity mentioned in table 6.1, column 3 for a drug of dependence mentioned in column 2, whether in pure form or a mixture containing the drug, is prescribed; and

(b) the small quantity mentioned in table 6.2, column 3 for a prohibited substance mentioned in column 2, other than items 5 and 6, whether in pure form or a mixture containing the substance, is prescribed; and

(c) the small quantity mentioned in table 6.2, column 3 for a prohibited substance mentioned in column 2, items 5 and 6, in a pure form of the substance, is prescribed.

Table 6.1 Small quantity—drugs of dependence

| column 1 item | column 2 drug of dependence | column 3 small quantity | column 4 discrete dosage unit (DDU) |
|------------------|--------------------------------|----------------------------|---|
| 1 | amphetamine | 1.5g | |
| 2 | cocaine | 1.5g | |
| 3 | methylamphetamine | 1.5g | |

Table 6.2 Small quantity—prohibited substances

| column 1 item | column 2 prohibited substance | column 3 small quantity | column 4 discrete dosage unit (DDU) |
|------------------|---|----------------------------|---|
| 1 | 3, 4- Methylenedioxyethylam- phetamine (MDMA) | 5 DDU or 1.5g | 0.3g |
| 2 | cannabis (dried cannabis) | 50g | |
| 3 | cannabis (harvested cannabis) | 150g | |
| 4 | heroin | 1g | |
| 5 | lysergic acid | 5 DDU or 0.001g | 0.0002g |
| 6 | lysergide (LSD, LSD-25) | 5 DDU or 0.001g | 0.0002g |
| 7 | psilocybine | 1.5g | |

**DRUGS OF DEPENDENCE (PERSONAL USE)
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(2) In this section:

discrete dosage unit (or DDU), for a drug of dependence or a prohibited substance, means the drug or substance in a form—

(a) prepared, or apparently prepared, to be administered as a single dose; and

(b) containing not more than—

(i) for a drug of dependence—the quantity mentioned in table 6.1, column 4 for a drug mentioned in column 2, whether in pure form or a mixture containing the drug; and

(ii) for a prohibited substance—the quantity mentioned in table 6.2, column 4 for a substance mentioned in column 2, other than items 5 and 6, whether in pure form or a mixture containing the substance; and

(iii) for a prohibited substance—the quantity mentioned in table 6.2, column 4 for a substance mentioned in column 2, items 5 and 6, in a pure form of the substance.

Examples—par (a)

tablet, capsule

dried cannabis means cannabis that has been subjected to a drying process.

harvested cannabis means cannabis that has been harvested and—

(a) is not dried cannabis; or

(b) is a mixture of dried cannabis and cannabis that is not dried cannabis.

Speaking notes:

These amendments are to the *Drugs of Dependence Regulation 2009*.

New section 3A of the *Drugs of Dependence Regulation* provides that the prescribed penalty for an offence notice issued for a simple drug offence is \$100. The penalty is unchanged from the existing penalty associated with a simple cannabis offence notice, but it has been moved from the *Drugs of Dependence Act* to the *Drugs of Dependence Regulation* for consistency with other areas of legislation and to facilitate any changes to the penalty in future in response to changing circumstances.

A small quantity of a particular drug of dependence or prohibited substance is as set out in column 3 of table 6.1 – for a drug of dependence, or column 3 of table 6.2 - for a prohibited substance.

The small quantities for these drugs, with the exception of lysergide and lysergic acid, are intended to refer to a mixture. This reflects that these drugs are usually mixed with other substances and sold in fairly standard amounts. However, the small quantities for lysergide and lysergic acid refer to a pure weight of the drug. This is because the mixed weights for these drugs can vary widely depending on the carrier that is used.

New section 6(2) establishes a definition for a discrete dose unit. The amendments propose introduction of a discrete dose unit for some drugs which are often packaged as a single dose, for example, capsules or tablets. This will facilitate measurement of those drugs.

**DRUGS OF DEPENDENCE (PERSONAL USE)
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The proposed list of drugs eligible for the simple drug offence notice and maximum penalty of one penalty unit includes those most commonly used and for which people are most commonly diverted from the criminal justice system. Methadone has been removed from the list proposed by the Private Member's Bill, as it is regulated as a pharmaceutical drug, unlike the others on the list.

The amendments propose changes to the small quantity amounts for most drugs listed in the Private Member's Bill. This is intended to increase consistency across the small quantity amounts for the different drugs, to facilitate implementation of the reforms, and to better reflect evidence on consumption patterns and drug dose amounts.

These changes have been informed by drug user self-reported consumption patterns recorded in the ACT and national Illicit Drug Reporting System annual reports, and the corresponding Ecstasy and Related Drugs Reporting System reports and evidence provided to the Select Committee Inquiry. The amounts proposed are intended to cover most people who use these drugs for 1-2 sessions or 1-2 days of use in most cases, allowing for varying use patterns. This means that all small quantity limits have been reduced from the personal possession limits proposed in the Private Member's Bill, except MDMA, commonly known as ecstasy, which has been increased.

For drugs where it is appropriate to specify a discrete dose unit such as MDMA, lysergide and lysergic acid, five discrete dose units has been chosen. This will capture the majority of individual drug over 2 days, or longer for use at lower levels. The levels have been chosen based on usage patterns described in both IDRS and EDRS reports, as well as other research conducted directly with current users. Five discrete dose units is intended to equate to the weight specified in grams in column 3 of each of tables 6.1 and 6.2. For MDMA both discrete dose units and mixed quantities are proposed as the drug is commonly used in formats that include capsules, tablets, powder and crystals.

Schedule 1.6

Schedule 1.6

Schedule 1.6

Schedule 1.6

Schedule 1.6

Schedule 1.6

Schedule 1.6

Schedule 1.6

ACT Health Directorate

| | | |
|-------------------------|---|-------------------------|
| To: | Minister for Health | Tracking No.: GBC23/507 |
| From: | Rebecca Cross, Director-General | |
| CC: | Dave Pepper, Chief Executive Officer, Canberra Health Services | |
| Subject: | Drugs of Dependence reforms – Notifiable Instrument | |
| Critical Date: | 15/09/2023 | |
| Critical Reason: | To ensure the notifiable instrument is in place ahead of commencement of the <i>Drugs of Dependence (Personal Use) Amendment Act 2022</i> . | |

Recommendations

That you:

1. Note the information contained in this brief; and

Noted / Please Discuss

2. Sign the attached notifiable instrument.

Signed / Not Signed / Please Discuss

Rachel Stephen-Smith MLA/...../.....

Minister's Office Feedback

Background

1. The *Drugs of Dependence (Personal Use) Amendment Act 2022* (the amending Act) was passed by the Legislative Assembly on 20 October 2022 and notified on 28 October 2022. It will commence on 28 October 2023.

Issues

2. The amending Act provides that a person issued with a Simple Drug Offence Notice (SDON) may discharge it either by paying a \$100 fine or by attending an approved drug diversion program.
3. New section 171BB of the *Drugs of Dependence Act 1989* (the Act) provides that, *The Minister may approve a drug diversion program for the assessment and treatment of people who are found in possession of drugs of dependence or prohibited substances.*
4. For the purposes of this section, an approval is a notifiable instrument. As the Act is within the Health portfolio, you may approve the notifiable instrument.
5. The ACT Health Directorate (ACTHD) intended that the relevant diversion program be the illicit drug diversion (IDD) program operated by Alcohol and Drug Services, Canberra Health Services (CHS). Police officers can already directly refer people to the IDD program instead of issuing a Simple Cannabis Offence Notice under the Act. A notifiable instrument to approve this program for the purposes of the amending Act is at Attachment A for your signature.
6. Once the instrument is signed, the Parliamentary Counsel's Office will add a notification number and it will be provided to the Legislative Assembly for noting only.

Financial Implications

7. The notifiable instrument has no direct financial implications.
8. The 2023-24 Budget included funding for an additional counsellor for CHS to address potential increased demand associated with the reforms. This will also help to address an existing gap within the CHS diversion service regarding youth specific support. Funding was provided in 2022-23 to allow early recruitment ahead of the commencement of the reforms, and a position has been advertised.

Consultation

Internal

9. Alcohol Tobacco and Other Drug (ATOD) Policy drafted the instrument with input from Public Health and Regulation, Population Health Division.

Cross Directorate

10. ATOD Policy is engaging with relevant directorates on an ongoing basis through the Drugs of Dependence implementation working group and the AOD Executives group. These groups include representatives from the Justice and Community Safety

OFFICIAL

Directorate, the Chief Minister, Treasury and Economic Development Directorate and CHS.

11. The Executive Director, Mental Health Justice Health Alcohol and Drug Services, CHS and the Operational Director, Alcohol and Drug Services have been directly apprised of the proposed notifiable instrument and raised no concerns.

External

12. The Drugs of Dependence implementation working group includes representatives from ACT Policing, the Alcohol Tobacco and Other Drug Association ACT (ATODA) and the Canberra Alliance for Harm Minimisation and Advocacy.

Work Health and Safety

13. Not applicable.

Benefits/Sensitivities

14. ACT Policing's (ACTP) drug diversion programs were reviewed in 2020. The review found that these programs are generally being delivered in accordance with best practice standards.
15. The IDD program was included in the reforms as an alternative to the fine in response to concerns regarding the financial burden that a fine may impose on already vulnerable individuals, in the absence of a mechanism to use other means of discharging the offence such as community service programs. This change also reflects the intention to treat drug use as a health problem rather than a matter for the criminal justice system.
16. The ACTHD continues to work through practical details with ACTP and other stakeholders, grounded by a shared understanding of the harm minimisation aims of the amending Act.

Communications, media and engagement implications

17. There are no communications or media implications for the notifiable instrument.

Signatory Name: Rebecca Cross, Director-General Phone:

Action Officer: Dr Kerry Coleman, Chief Health Officer Phone: x 49853

Attachments

| Attachment | Title |
|--------------|---|
| Attachment A | Drugs of Dependence (Drug Diversion Program) Approval 2023 (No 1) |

Australian Capital Territory

Drugs of Dependence (Drug Diversion Program) Approval 2023 (No 1)

Notifiable instrument NI2023–

made under the

Drugs of Dependence Act 1989, section 171BB (Drug diversion program)

1 Name of instrument

This instrument is the *Drugs of Dependence (Drug Diversion Program) Approval 2023 (No 1)*.

2 Commencement

This instrument commences on the commencement of the *Drugs of Dependence (Personal Use) Amendment Act 2022*.

3 Approval

I approve the Illicit Drug Diversion Program operated by Alcohol and Other Drug Services, Canberra Health Services, to be a drug diversion program for the assessment and treatment of people who are found in possession of drugs of dependence or prohibited substances, for the purposes of section 171BB of the *Drugs of Dependence Act 1989*.

Rachel Stephen-Smith
Minister for Health
date signed



Date: 12 September 2023

SUBJECT: Drugs of Dependence

Talking Points

- The *Drugs of Dependence (Personal Use) Amendment Act 2022* will introduce important reforms which should not be delayed.
- The reforms reduce maximum penalties for low-level possession of a limited list of drugs for personal use only. The drugs are not being legalised, and people can still be prosecuted for other offences that may occur at the same time as drug possession.
- The Government is taking a health-based approach to reduce the harms which can be associated with illicit drug use and the criminal justice system. The changes will encourage people who use drugs to get the support they may need. The changes recognise that a range of factors and life experiences can contribute to drug use, and a compassionate approach is needed.
- The changes will help bring our drug laws in line with modern community standards and preferences and expert opinion. They reflect global trends in drug policy.
- Diversion away from the criminal justice system for personal-use drug possession offences is supported by the *ACT Drug Strategy Action Plan*, the *Australian National Drug Strategy*, the World Health Organisation and the United Nations. Diversion options for possession offences have been available in the ACT for many years and drug use has trended downwards over that time.
- The legislation will simplify administration of minor drug offences and reduce the time and resources used by police and courts, making more efficient use of taxpayer funding.

Broader points covered from JACS, media and others:

- The *Drugs of Dependence (Personal Use) Amendment Act 2022* (the Act) was passed in October 2022 and will commence on 28 October 2023.
- If a person is apprehended in possession of a small quantity of certain drugs, police may refer the client to Canberra Health Services for an assessment and education session or issue a Simple Drug Offence Notice (SDON). The person can then choose to pay a \$100 fine or attend the session, which may result in a referral to voluntary treatment if appropriate.
- If this is completed, no further action will be taken, and the person will not receive a criminal record.

- Police will retain discretion to charge the person to appear in court. The maximum fine that a court can impose for possession at or below the small quantity limits will be \$160 (one penalty unit), and no prison sentence can be imposed.
- The Act also reduces the maximum prison sentence for personal possession of drugs above the new small quantity thresholds and for drugs not included on the list, from two years to six months. However, no changes are proposed to penalties for drug trafficking or drug driving.
- The ACT Health Directorate, Canberra Health Services, ACT Policing and non-government organisations are working collaboratively on implementation.
- This includes development of a communications campaign, appropriate supports for operational staff and various administrative arrangements.
- ACT Policing has advised that it is on track to commence the new arrangements on 28 October 2023.
- To date, some examples of the ACT Health Directorate implementation supports to date include:
 - postcards providing information about the changes, which are being distributed through alcohol and other drug treatment and support services;
 - focus groups to test clarity of messaging ahead of the communications campaign;
 - additional questions in the Illicit Drug Reporting System and Ecstasy and Related Drugs Reporting System 2023 surveys, to test understanding of the reforms; and
 - funding has also been allocated to Canberra Health Services for recruitment of a counsellor to support implementation of the changes ahead of October.
- The 2023-24 Budget measure includes \$1.08 million over 4 years for the remaining implementation requirements, independent evaluation and ongoing Canberra Health Services staffing.
- There will be an independent evaluation of the changes after two years of operation, as required by the Act. The ACT Health Directorate is considering data needs to support the evaluation.

Action Officer: Megan Arnold, Senior Director, Alcohol, Tobacco and Other Drugs
Cleared By: Dr Kerry Coleman, Chief Health Officer



ACT Health Directorate

| | | |
|-------------------------|---|-----------------------------|
| To: | Minister for Health | Tracking No.: MIN2023/00716 |
| Through | Rebecca Cross, Director-General | |
| From: | Dr Kerry Coleman, Chief Health Officer | |
| Subject: | Drugs of Dependence law reforms implementation update | |
| Critical Date: | 29/09/2023 | |
| Critical Reason: | For your information ahead of your upcoming leave. | |

Recommendation

That you:

1. Note the information contained in this brief.

Noted / Please Discuss

Rachel Stephen-Smith MLA/...../.....

Minister's Office Feedback

Background

1. The *Drugs of Dependence (Personal Use) Amendment Act 2022* (the Act) will come into effect on 28 October 2023.
2. ACT Health Directorate (ACTHD) has been working with key stakeholders on implementation arrangements for the Act. This brief provides an update on those arrangements and related matters.

IssuesProcess – simple drug offence notice

3. The process for issuing a Simple Drug Offence Notice (SDON) is agreed by all relevant agencies. ACT Policing (ACTP) will initially divert people to Canberra Health Services' (CHS) Illicit Drug Diversion (IDD) program using the existing Supportlink system, and diversion clinicians will contact referred individuals.

Schedule 1.14, Schedule 2.2(a)(x)



Recruitment

20. Funding was provided in the 2023-24 Budget for an additional counsellor for CHS. This position was advertised but to date is unable to be filled. CHS has contingency plans in place for staffing should demand for diversion services significantly increase. Demand for CHS diversion will be monitored.
21. Funding was also provided for additional staffing broadly within ACTP. ACTP has advised it does not consider it essential for a drugs of dependence specific position to be filled before 28 October, as ACTP will likely shift internal resources if needed.

Monitoring and evaluation

22. There is a legislative requirement for an independent evaluation of the Act to be conducted within the first three years of implementation. Noting the benefits of considering evaluation pre or early in implementation, ACTHD will seek to release a request for tender in late 2023/early 2024 depending on procurement timeframes. The Population Health Division is considering measures relevant for inclusion in an evaluation framework ahead of implementation to maximise availability of appropriate data for the evaluation.
23. ACTHD is developing a program monitoring framework with a particular focus on the first 6-12 months to enable early identification of emerging issues including undesirable outcomes, and to inform program decisions as necessary. Access to relevant and timely data from a number of areas within ACT Government is crucial to enabling the monitoring process and subsequent response if issues are identified; cross-directorate discussions are being held to facilitate this goal.
24. Ahead of 28 October 2023, there has also been interest in the 2020 cannabis reforms. There is a legislative requirement to review the operation of these reforms, as soon as practicable after the end of their third year of operation, and present the review report to the Legislative Assembly within six months of its start date. This review is anticipated to commence in late October for presentation to the Assembly in late March 2024. Outcomes from this review will be used to inform process and monitoring of the DODA Amendment within the first 12 months of its implementation.

Communication materials

25. A range of communication tools are in the final stages of development, with public engagement by ACTHD intended to commence in the next week. These include website content, flyers and social media posts. A frequently asked questions document is currently out for review with Government and non-Government stakeholders, including ACTP, CAHMA and the Alcohol Tobacco and Other Drugs Association ACT (ATODA). It is intended that this document be used by a range of stakeholders to improve their own understanding, as well as forming the basis for conversations with service clients at CHS, CAHMA and other drug treatment and harm reduction services. It will also facilitate consistent messaging across Government agencies.

Financial Implications

26. The 2023-24 Budget allocated \$1.08 million over four years for a communications campaign, administrative arrangements, staffing for CHS, training for ACTP and evaluation. Funding for ACTP staffing was provided separately.
27. Approximately \$38,000 has been committed or spent for 2023-24, out of \$363,000. This is lower than might be expected given delays to ACTP training and CHS staff recruitment, but also reflects that communications materials are yet to be finalised, and evaluation procurement has not yet commenced. In addition, \$52,000 was provided for an external provider to develop the SDON form, but ACTP has advised that as this is now being completed in-house and it is expected to be cost neutral.
28. The above-mentioned testing functions cannot be absorbed by ACTHD. The ongoing funding for this will need to be considered within the ACTGAL Modernisation project that will, in part, examine the fees and charges applied across all ACTGAL services.

Consultation

Internal

29. The Executive Group Manager, Population Health Division, has responsibility for ATOD Policy and ACTGAL.

Cross Directorate

30. ATOD Policy has engaged with CHS, Access Canberra, Justice and Community Safety Directorate and Chief Minister and Economic Development Directorate (CMTEDD), both as part of the implementation working group and executive group and separately.

External

31. ATOD Policy continues to engage with ACTP in the working group and executive group and separately.
32. CAHMA and ATODA are represented on the working group and will play a key role in communication. This is discussed further below.

Work Health and Safety

33. ACTHD has consulted with CMTEDD about ACTPS alcohol and other drug policies. CMTEDD has advised that the existing policy is due for a scheduled review but as the legal status of the drugs is not changing, no immediate changes are required.

Benefits/Sensitivities

34. While there is evidence of community support for the reforms, there remain sections of the community who are vocally opposed, as well as those who consider the reforms insufficiently progressive and stigmatising, given the ongoing criminal justice response.
35. Despite extensive consistent Government messaging, misinformation in the media and legislative complexity means there is ongoing confusion about the effect of the

reforms. ATOD stakeholders have expressed particular concern about this. The focus groups with people who use drugs and the general public have highlighted these issues, to be addressed by the communications campaign.

Schedule 1.14, Schedule 2.2(a)(x)

Communications, media and engagement implications

38. The reforms have attracted significant recent media coverage, often negative. While published ACTP comments have been negative, the internal view as expressed to ACTHD is more balanced.
39. ACTHD has issued some high-level communications emphasising the health intent behind the reforms, to counteract other coverage.
40. The focus groups conducted in August gathered key insights about the different target groups. For the general public, the emphasis will be on the intent of the reforms and expected benefits, and organic channels such as social media will be used.
41. For people who use drugs, there will be physical collateral such as posters with high-level key messages as well as the detail of the changes. The focus groups emphasised the importance of using trusted messengers such as Directions Health Services and CAHMA, so these services have been equipped with key questions and answers, to support engagement with media and their clients.
42. If appropriate, the Justice and Community Safety Directorate has indicated the Minister for Police and Emergency Services would likely appreciate you sharing a copy of this briefing to provide an update on the collaborative work achieved.

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Q&As: Drugs of Dependence (Personal Use) Amendment Act 2022

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GENERAL

What are the changes?

Drugs are not being legalised. In the ACT, the maximum penalties are being reduced for possessing small amounts of some drugs from 28 October 2023.

A person found with small amounts of some drugs may first be referred by police to a health focused drug diversion session and will be contacted by Canberra Health Services diversion staff to arrange a session. The matter will be referred back to police should they not attend the health session, or if the person would prefer to pay the fine.

Police may then issue a Simple Drug Offence Notice (SDON). The notice may be resolved through a payment of a \$100 fine or attendance at a drug diversion session, which at this point, requires the person to contact Canberra Health Services as per the information on the notice.

The SDON includes information on how to pay.

If an SDON is issued, the person has 60 days to either pay the fine or attend the health session, from the date of SDON issue. If either option is completed within 60 days, no further action will be taken and the person will not receive a criminal record.

The session is a one-off 1-hour assessment with Canberra Health Services and will involve health assessment, advice on harm minimisation, and support for accessing other parts of the health system or other support services if needed.

The drugs affected are as follows:

| Drug | Small quantity |
|---|-------------------|
| Amphetamine | 1.5g |
| Cocaine | 1.5g |
| Methylamphetamine ('ice' or 'meth') | 1.5g |
| 3,4 Methylenedioxymethylamphetamine (MDMA or 'ecstasy') | 1.5g (or 5 DDU) |
| Cannabis (dried)* | 50g |
| Cannabis (harvested cannabis)* | 150g |
| Heroin | 1g |
| Lysergic acid | 0.001g (or 5 DDU) |
| Lysergide (LSD, LSD-25) | 0.001g (or 5 DDU) |
| Psilocybine ('magic mushrooms') | 1.5g |

There is a discrete dose unit (DDU) for MDMA, lysergide and lysergic acid which are often packaged as a single dose, for example, capsules or tablets. This means you can be eligible for a diversion if you have no more than 5 MDMA, lysergide or lysergic acid doses, such as capsules or tablets.

There will no longer be the possibility of a prison sentence for possessing small quantities of these drugs. If the matter goes to court, the maximum penalty that a court can impose will be one penalty unit (currently \$160).

Higher penalties still apply for possession:

- above the small quantity limits for drugs on this list; and
- of *any amount* of the drugs that are not listed.

The maximum penalty for these offences is 50 penalty units and/or 6 months imprisonment (reduced from 2 years) and a criminal conviction.

More information is at www.health.act.gov.au/news/illicit-drugs-reform-act and www.police.act.gov.au/.

What does decriminalisation mean regarding these changes?

It remains illegal to possess illicit drugs including those listed under these amendments.

However, from 28 October 2023, if found in possession of a small quantity of the prescribed drugs, police may refer you to a health drug diversion session. You will not receive a criminal penalty or criminal record if you either attend the drug diversion session or pay a \$100 fine.

The ACT Government is **not** legalising these drugs. Legalising drugs would mean a legal supply is available with no criminal penalties for possession or use, as for alcohol and tobacco.

Supply and trafficking retain significant criminal penalties.

Are all drugs legal now?

No, the affected drugs will remain illegal. The changes simply reduce the maximum penalties for personal possession of small quantities of nine illicit drugs with the establishment of a simple drug offence notice (SDON), which provides the option of attending a health session or paying a fine.

Possession above the small quantity threshold may still attract up to six months imprisonment and/or a fine of up to 50 penalty units.

Supply and trafficking retain significant criminal penalties.

Adult possession or cultivation of small amounts of cannabis for personal use is not affected by the changes. It remains fully decriminalised. People under 18 found in possession of small amounts of cannabis may receive a SDON.

What does this mean for cannabis?

Adult possession or cultivation of small amounts of cannabis for personal use is not affected by the changes. It remains fully decriminalised.

If you're aged 18 and over in the ACT, you can:

- possess up to 50 grams of dried cannabis or up to 150 grams of fresh cannabis
- grow up to two cannabis plants per person, with a maximum of four plants per household
- use cannabis in your home (personal use).

Note there are other conditions. For further information, go to: [Home - Cannabis \(act.gov.au\)](https://www.act.gov.au)

People under 18 in possession of up to 50g of dried cannabis or up to 150g of fresh cannabis may receive a diversion to a health session or a \$100 fine.

Higher penalties and potential prison sentences still apply for larger quantities.

What does this mean for the workplace?

The drugs are still illegal, and these reforms do not affect Work Health and Safety obligations. For more information on alcohol and other drugs in the workplace, consult your employment conditions or see here:

[Alcohol and Drugs - WorkSafe ACT](#)

[Drugs and alcohol | Safe Work Australia](#)

What does this mean for drug driving?

Drug driving laws will not change. It is still illegal to drive with any amount of illicit drugs in your system.

How do the changes apply to young people?

People under 18 may receive a diversion to a health session or a fine for possession of small amounts of any of the affected drugs.

However, only under 18s can receive a simple drug offence notice for possession of small amounts of *cannabis*. Adults cannot receive a SDON for cannabis because no penalties apply for low-level cannabis possession by adults.

If an SDON is issued to a person under the age of 18 it is a requirement for a copy of the SDON to be served on a person with parental responsibility for the person.

Interactions with other legislation

The changes do not affect other legislation.

Growing (apart from personal amounts of cannabis), producing, trafficking, selling and gifting drugs all remain illegal, with substantial penalties.

Other criminal offences that may occur at the same time as drug possession are not impacted by the changes. It is still illegal to drive with any amount of illicit drugs in your system. If you are in possession of drugs and charged with other offences it is likely you will be charged with drug possession offences at the same time – you will not be referred to Canberra Health Services or issued an SDON.

Laws relating to medicinal cannabis also do not change. If you have been legally prescribed medicinal cannabis you can carry it in accordance with your prescription.

Police also retain the power to charge someone with administration to someone else and self-administration of an illegal drug.

PROCESS AND TECHNICAL

What will the process be when someone is found with a small amount of drugs?

- Police will confiscate the drugs and can take them away to test and weigh them. This will inform police if someone is eligible to receive a Simple Drug Offence Notice.
- In most instances, police will then refer them to the Canberra Health Services (CHS) diversion service.
- The CHS diversion service will contact the person and set up a time for the health session.
 - Once the person has attended a session, police will be advised and will take no further action.
 - The person does not get a Simple Drug Offence Notice or a criminal record, but their details will be in the police internal system.
- If the person does not satisfy the drug diversion or requests a fine, CHS will advise police
- If eligible, police may issue a Simple Drug Offence Notice.
- To satisfy the SDON, the following must be completed within 60 days:
 - The person can then pay the fine via the Access Canberra website, over the phone or in person; or
 - Alternatively if the person decides they don't want to pay the SDON, they can contact Canberra Health Services to complete a drug diversion. There will then be no further action.

Will the Simple Drug Offence Notice be issued on the spot?

No. To be able to issue a Simple Drug Offence Notice, police officers need to assess the substance and its weight. It is not possible to do this at time of seizure.

How can the fine be paid?

If you receive a Simple Drug Offence Notice, it will include instructions for payment via the Access Canberra website or in person on the notice. You will also still have the option to attend a health session instead if you wish, the instructions for which are also on the SDON.

Can I pay the fine in instalments or do community service instead?

Payment by instalments or being able to attend a community service program is not currently possible.

Police will seek to divert an individual to complete a health drug diversion session in the first instance rather than issuing a SDON. However, if an SDON is issued, a person may choose to resolve the SDON by paying the fine or completing a health session with Canberra Health Services.

The health session incorporates information on drug harm reduction. It is useful even if you continue to use drugs. Information you provide in the session is stored in your Digital Health Record. These notes are accessible via DHR to other areas of Canberra Health Services. This is an existing service and is not collecting any additional information compared to before the reforms. Private health facilities (such as general practitioners) are not included in the DHR.

What does the health session look like?

The session is a one-off 1-hour assessment with Canberra Health Services (CHS), either face-to-face or via telehealth where appropriate.

The session involves a health assessment to assess your well-being and to identify any need for support or early intervention relating to problematic drug use. The CHS staff provide assessment, education around harm minimisation and assist in creating external referrals if needed or necessary to further support you.

The session provides harm minimisation information in relation to drug use. It is useful even if you continue to use drugs. The session helps to identify whether you have a health issue and gives you information to support your health and wellbeing.

What happens if a person doesn't attend the health session or pay the fine?

Police retain the ability to progress the matter via the justice system.

What treatment and support services are available?

A wide range of alcohol and other drug treatment and support services are available in the ACT. Services provided by non-government organisations include: non-residential withdrawal; peer support; specialist alcohol, tobacco and other drug primary health care; residential rehabilitation; day program treatments; a range of harm reduction programs and flexible outreach targeted to marginalised community members.

Canberra Health Services provides specialist addiction medicine, opioid replacement therapy, withdrawal management, inpatient consultation and liaison, community counselling, police and court drug diversion services and Intake (phone triage and assessment service).

If you would like support in relation to your drug use, you can:

- call the National Alcohol and Other Drug Hotline on 1800 250 015
- access information on treatment and support services on the [ATODA directory](#)
- call the Canberra Health Services Alcohol and Other Drug counselling and treatment service on (02) 5124 9977 or access information here: [Canberra Health Services](#)
- call the Canberra Alliance for Harm Minimisation and Advocacy on (02) 6253 3643, access information here: [CAHMA](#), or drop in to: Shop 17 Churches Centre, 54 Benjamin Way, Belconnen.

What happens if I have multiple drugs?

If an individual has two different types of eligible illicit drugs, they may be eligible for an SDON if they have no more than 100 per cent of the small quantity limit of each drug.

If they carry smaller amounts of multiple drugs which add up to no more than 200 per cent of a small quantity limit, they may still be eligible for an SDON.

For example, 1.5g is the small quantity for amphetamine, cocaine and MDMA. A person may be eligible for an SDON if they had:

- 1.5g of amphetamine (100 per cent of the small quantity amount);

- 0.75g of cocaine (50 per cent of the small quantity amount); and
- 0.75g of MDMA (50 per cent of the small quantity amount).

However, if they had the same amount of amphetamine and cocaine as above, but 0.9g of MDMA (60 per cent of the small quantity amount), they may face up to 50 penalty units and/or 6 months imprisonment.

If the person is under 18, small quantities of cannabis are included in this calculation. If the person is 18 or over, small quantities of cannabis are **not** included in this calculation.

Information about the weights

The small quantities for the drugs on the list (except for lysergide and lysergic acid, or LSD) are intended to refer to a mixture. This is because these drugs are usually mixed with other substances and sold in standard amounts.

The small quantities for lysergide and lysergic acid refer to a pure weight of the drug. This is because the mixed weights for these drugs can vary widely depending on the carrier that is used.

There is a discrete dose unit for some drugs which are often packaged as a single dose, for example, capsules or tablets. These drugs are MDMA, lysergide and lysergic acid. This means you can be eligible for a diversion if you have no more than 5 MDMA, lysergide or lysergic acid doses, such as capsules or tablets.

The small quantity for psilocybine applies to the relevant mushrooms, regardless of how 'dry' they are.

Does a Simple Drug Offence Notice go on my criminal record? Does it appear in the police system?

A Simple Drug Offence Notice will not appear on a person's criminal record. However, if you do not either attend the health session or pay the fine, police retain the ability to progress the matter via the justice system i.e. you may be issued with a criminal caution or prosecuted for the offence.

The outcomes of a criminal caution or court proceeding could result in a criminal record and could affect other things such as Working with Vulnerable People registration.

The incident and the issuing of the SDON does appear in the police internal record system, but not on a criminal history check.

POLICY AND LEGAL

Why are the changes being made?

The ACT Government is committed to a harm minimisation approach to the use of alcohol, tobacco and other drugs.

These changes aim to reduce the harm associated with illicit drugs with a focus on diversion and access to treatment and rehabilitation.

People who use drugs will be offered health services and support while providing a pathway away from the criminal justice system.

Providing people who use alcohol and/or other drugs with access to safe, appropriate, and affordable services and support is key to the ACT Government's harm minimisation approach.

Diversion away from the criminal justice system for personal-use drug possession offences is supported by the *ACT Drug Strategy Action Plan 2022-26*, the *Australian National Drug Strategy 2017-26*, the World Health Organisation and the United Nations.

This reform has been supported by extensive consultation and input from policy experts, local and national drug and alcohol sector advocates, service providers, ACT Government directorates and ACT Policing.

Have you consulted on these changes, including with ACT Policing? What is the history of the reforms?

This reform has been supported by extensive consultation and input from policy experts, local and national drug and alcohol sector advocates, service providers, ACT Government directorates and ACT Policing.

While developing the Government amendments to the original Private Member's Bill, the ACT Health Directorate regularly engaged with ACT Policing and other stakeholders in working groups and individual meetings. This work continued through the 12-month implementation period to ensure implementation arrangements are underpinned by a shared understanding of the purpose of the reforms.

The reforms were subject to public scrutiny, including as part of a Legislative Assembly inquiry, over a period of more than 18 months prior to passage, with a further 12-month implementation period ahead of commencement. The history of the reforms is as follows:

- Mr Michael Petterson MLA introduced the Drugs of Dependence (Personal Use) Amendment Bill 2021 on 11 February 2021.
- It was referred to the Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 on the same day.
- The Select Committee received 59 submissions, most of which supported the Bill.
- The Select Committee also held public hearings over five days in July 2021.
- The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) provided a Scrutiny Report on the Bill on 24 March 2021.
- The Select Committee report was released on 30 November 2021. It included a dissenting report from Mr Peter Cain MLA.
- The Government response to the Select Committee report was tabled on 9 June 2022.
- Government amendments to the Bill were circulated ahead of limited debate in the Assembly on 3 August 2022.
- The Bill was debated and passed (with Government amendments) on 20 October 2022. The Drugs of Dependence (Personal Use) Amendment Act 2022 was notified on 28 October 2022 and will commence on 28 October 2023.

Do the changes apply everywhere in the ACT? Do they apply on university campuses?

As a general proposition, Territory laws generally apply everywhere in the ACT. The exception here, is that Territory law has no effect if it cannot operate concurrently with another law in force in the ACT if it is inconsistent with such law, such as a Commonwealth law, or an ANU statute.

The *Australian National University Act 1991* (Cth) gives the ANU Council (Council), which is the ANU's governing authority, the power to make ANU Statutes with respect to, amongst other things, "the management, good government and discipline of the University" (section 50).

The Council is specifically empowered to make Statutes relating to traffic (section 51). It would not immediately appear to have any express power to make criminal laws separate to those of the Commonwealth or the Territory.

It is the ACT Government's view that the changes to ACT criminal laws relating to personal possession of small amounts of certain otherwise illicit drugs can operate concurrently with the *Commonwealth Criminal Code 1995* and are valid and effective everywhere in the ACT.

Are the changes consistent with Commonwealth law?

It is the ACT Government's view that the changes to ACT criminal laws relating to personal possession of small amounts of certain otherwise illicit drugs can operate concurrently with the *Commonwealth Criminal Code 1995* and are valid and effective everywhere in the ACT.

The Act applies to Jervis Bay Territory (JBT).

The ACT Government notes that the application of ACT laws to JBT, and the application of laws of JBT to aircraft, ships and areas outside of Australia, is a matter for the Commonwealth Government, and the Commonwealth may alter the operation of ACT laws in the JBT as it considers appropriate.

The *Jervis Bay Territory Acceptance Act 1995* (Cth), s4A(1) provides that the laws in force in the ACT are also in force in JBT (so far as they are applicable to JBT and not inconsistent with a Commonwealth Ordinance).

AFP (and ACT Policing) retain the ability to charge someone with the Commonwealth drug possession offence under s 308.1 of the *Criminal Code 1995* (Cth). Noting this continues to apply in the ACT, it follows that it also applies in JBT and elsewhere where JBT law applies (in conjunction with other provisions of the *Criminal Code*, which define how Code offence provisions apply outside Australia).

Why are there multiple possession thresholds?

The Government has taken a two-tier approach to personal use, to allow for lower penalties (and no prison sentence) for amounts that people might have in their possession for up to two days of personal use, but higher penalties above that level.

The ACT trafficable quantity amounts are not changing. However, the maximum prison sentence for possession of these amounts for personal use is lowered from two years to six months.

This has been done to address community concerns about personal users of small amounts entering the criminal justice system while still addressing higher level drug possession offences.

Why aren't more drugs eligible for reduced penalties?

The listed drugs include the key illicit drugs that people commonly use, are treated for, and are diverted for in the ACT, and whose properties are relatively well understood.

Small changes to drug chemistry can result in 'derivative' drugs that are many times more potent or toxic than original drugs. Because of that, a precautionary approach is important.

Why haven't you fully decriminalised drugs?

Illegal drugs are not safe to use. The ACT Government does not condone the use of illegal drugs and will continue efforts to reduce associated harms. Reducing the penalties associated with personal possession of drugs is consistent with a harm minimisation approach by preferring appropriate health-based supports to individuals using drugs over a criminal justice system response.

How were the small quantities developed?

- Development of the small quantity amounts in the Act drew on regular drug users' estimates of how much they consume reported in the Ecstasy and Related Drugs Reporting System (2021 and 2020) and the Illicit Drugs Reporting System (2021 and 2020). The analysis drew on both ACT and national data.
- The proposed small quantities drew on drug users' reports of heavy consumption over 1-2 days, acknowledging that drug users have a range of consumption patterns that are estimated by this data, and which cannot be measured directly.
- Data from these reports was supplemented by additional data summarised in the University of New South Wales Drug Policy Modelling Program in its submission to the Select Committee Inquiry on the Bill. The Drug Policy Modelling Program provided some information on average purchase quantities, although this not available for every drug.
- ACT Health Directorate also carried out consultations on the small quantity amounts with Canberra Health Services' Alcohol and Drug Service, ACT Policing, and ACT Government Laboratories.
- The small quantity amount for MDMA (ecstasy) was raised following this assessment process to 1.5 grams from the 0.5g grams originally proposed in the Private Member's Bill. The small quantity amounts for harvested and dried cannabis were maintained at the level in the Private Member's Bill.
- The small quantities for other drugs were lowered: these quantities were initially based on Commonwealth trafficable quantities, not on evidence of consumption patterns.
- The small quantities amounts determined by this process are in broad terms similar to the small quantity amounts used to determine lesser penalties in NSW and Victoria.

Why would drugs still be confiscated?

Possession of the affected drugs is still illegal. The drugs will be seized by police and lodged as evidence. Police require the substance/s to be identified and the quantity established before issuing a Simple Drug Offence Notice or criminally pursuing the matter.

Will drug use increase as a result of these changes?

The Government is committed to a continued focus on disrupting drug trafficking and reducing the supply of drugs.

Research indicates that drug use is not strongly linked to 'on paper' levels of punishment for personal possession. Diversion options for possession offences have been available in the ACT for many years and drug use has trended downwards over that time.

The ACIC Wastewater Monitoring Reports show the ACT is consistent with a broader national trend of increased cannabis consumption during the COVID-19 lockdown period. The use of cannabis declined nationally, and within the ACT, as much of the country exited lockdown but remains at elevated levels nationally compared to before the pandemic. Prior to COVID-19, the most recent

National Drug Strategy Household Survey (2019) indicated that the ACT had the lowest recent use of any illicit drugs of any state or territory.

There is no data in the reports to indicate the legislative changes to cannabis caused increased cannabis use in the ACT.

Drug trends will be carefully monitored drawing on local data on drug use and consultation with stakeholders. An independent review will also be conducted after two years.

Won't the legislation just encourage drug dealers and organised crime?

Drug diversion is an agreed component of the Australian national approach to drug policy. The legislation does not make any changes to penalties for drug supply – there are still very substantial penalties under both Commonwealth and ACT law for drug supply.

Penalties for small quantity personal possession offences have been lowered, while limiting potential loopholes for drug dealers at higher levels of possession offences.

Is drug use a driver of crime?

- Research indicates that the rate of drug use is not strongly linked to levels of punishment for personal possession, however the government will carefully monitor drug trends following any changes to legislation.
- The consumption of alcohol and other drugs may influence people to engage in risky or criminal activities such as driving a motor vehicle, offensive conduct and verbal or physical violence. However, most people who regularly use alcohol or illicit drugs do not report engaging in risky behaviours or criminal activity.
- People who recently used illicit drugs were more likely than recent drinkers to engage in criminal behaviour. However, criminal activity is generally declining.
- The most recently available data from the National Drug Strategy Household Survey (NDSHS) is from 2016 and showed that of people aged 14 and over:
 - 3.1% of people who recently used illicit drugs created a disturbance, damaged or stole goods (down from 5.9% in 2007).
 - 0.6% of people who recently used illicit drugs physically abused someone (down from 2.4% in 2007).
- While illicit drugs are associated with a range of harms, this also means that it is important to encourage people who use them to access health services to seek help. People who use heroin and methamphetamine, particularly people who inject these drugs, are potentially some of the most marginalised people who are most likely to benefit from diversion out of the criminal justice system and to health services.
- The reforms are intended to help to reduce stigma around illicit drug use and encourage people to access the supports they may need, including drug treatment.
- Drug treatment is an effective way to reduce crime driven by addictive drug use.
- It is also important to note that crime is driven by a wide range of factors.

Response to concerns from ACT Law Society, pharmacists, the AFP, and ACT Policing, including on narco-tourism

The drugs remain illegal and will still be confiscated, and drug use is not safe or encouraged. These messages are a key part of the communications campaign, both targeted and for the general public.

Higher penalties still apply for possession above the small quantity limits for the affected drugs, and of any amount of other drugs. The changes do not affect other legislation. Trafficking and supply laws do not change and these offences retain significant criminal penalties.

Research indicates that drug use is not strongly linked to levels of punishment for personal possession. It is important to note that diversion is an accepted part of the broader national harm minimisation approach to drug use, of which traditional law enforcement is also one part.

While illicit drugs are associated with a range of harms, this also means that it is important to encourage people who use them to access health services to seek help. People who use heroin and methamphetamine, particularly people who inject these drugs, are potentially some of the people who are most likely to benefit from diversion out of the criminal justice system and to health services.

An independent review into the changes will be conducted after two years of operation. Drug trends following the legislative changes will be carefully monitored drawing on local data on drug use and advice from an expert consultative group.

Why are drugs like heroin and methamphetamine included for reduced penalties?

Police have been able to divert people to assessment and drug education for possession of heroin or amphetamines for 20 years under the existing Illicit Drug Diversion program.

Methamphetamine and heroin use are both linked to disadvantage and to dependent patterns of use. Excluding methamphetamine and heroin from the list of drugs would have a disproportionate impact on people who use drugs who are dependent and more likely to be highly disadvantaged.

People who are dependent are unlikely to stop using a drug because of the threat of criminal punishment. They are also the people most likely to benefit from drug diversion, and treatment can reduce crime that is driven by underlying drug addiction.

The Government notes there is some concern about methamphetamine use being associated with other offences. People can still be charged with other offences that occurred at the same time as the drug possession offence.

Why are you reducing penalties for drug possession when some community members are so strongly opposed?

The Government acknowledges there are different opinions within the ACT Community on drug taking and drug offences. However, community opinion in the ACT supports diversion to education and treatment and the use of fines to respond to drug possession offences.

Won't there be more drug driving as a result of the changes?

The changes relate to drug possession only. The laws on drug driving are not changing and significant penalties remain in place for drug driving.

This issue is an important one and the Government will continue to monitor drug driving data and to respond accordingly.

Potential for exploitation of the scheme in relation to trafficking

In its submission to the Select Committee Inquiry into the Drugs of Dependence Bill, published in June 2021, ACT Policing highlighted a case of the eligible quantity for a simple cannabis offence notice being exploited to sell cannabis to Canberra schoolchildren as young as 12 years old.

The Government does not have access to the details of this matter beyond what is provided in the submission.

However, from the information provided, the Government notes that while the amount in question was a personal possession amount, this was a circumstance of selling drugs to young people. A range of evidence can be used to prove a criminal charge of supply, regardless of the amount in question.

Supply and trafficking laws are not changing. These offences retain significant criminal penalties.

Drug trends following the legislative changes will be carefully monitored drawing on local data on drug use and advice from an expert consultative group.

Decriminalisation in other jurisdictions

The ACT cannot be directly compared to other jurisdictions. No other reforms are precisely the same as those in the ACT, and the exact experience of each jurisdiction is different for a range of reasons, including cultural and geographic differences.

For example, many of the international jurisdictions to which the ACT has been compared are dealing with toxic drug supply issues, particularly in relation to fentanyl. They also have different legal systems.

It should also be noted that the societal problems that some have attributed to drug policies in other jurisdictions, such as homelessness, are multi-faceted and arise from a range of factors.

It is also important to consider a range of sources when assessing the impact of reforms. Many points raised have focused solely on the views of police.

The ACT Government will continue to monitor information and evaluation data as it becomes available from other jurisdictions.

Portugal

Portugal moved drug possession offences out of the court system and introduced drug tribunals which encouraged people to attend treatment.

The Portuguese approach has been criticised for being overly resource intensive since most people referred to drug tribunals were non-dependent cannabis users. The ACT has already gone further than Portugal and fully lifted penalties for adult cannabis use.

Low-level drug possession in the ACT can still be prosecuted in court where appropriate, and this is likely to occur where other offences are involved. ACT Policing also retain the option to charge people under Commonwealth law.

British Columbia

The reforms in British Columbia, Canada, in place since January 2023, are more extensive than the reforms in the ACT. They have effectively legalised small quantities of all illicit drugs across the entire province, meaning police have limited powers to intervene or seize drugs.

In contrast, in the ACT, illicit drugs will remain illegal, and police retain the power to search people and seize illicit drugs, as well as a range of other powers. They can also still charge people for other illegal behaviour that occurs in conjunction with drug possession.

San Francisco

San Francisco's law reforms, introduced in 2014, included a reduction in classification and penalties for drug possession for personal use. However, they were much broader than the upcoming ACT reforms. In San Francisco, property crimes (such as fraud and theft) where the property involved is less than \$950 in value are no longer prosecuted as felonies. This reform is not proposed in the ACT.

ACTP retain the power to charge someone with other associated crimes. If a person is in possession of drugs and charged with other offences it is likely they will be charged with drug possession offences at the same time.

Portland, Oregon

Portland's reforms, which came into effect in early 2021, are similar to those in the ACT. However, Portland ranks 50th out of 50 states in the United States for per capita drug treatment. In contrast, the ACT has the second-highest per capita treatment rate in Australia. The ACT Government's strong ongoing investment in drug treatment services will support the implementation of the drug law reforms.

It has also been suggested that police in Portland lack power to search those suspected to be in possession of illicit drugs. Police in the ACT will retain this power.

NSW

NSW law currently provides for a \$400 penalty for possession of a small quantity of MDMA (ecstasy) at music festivals only.

The changes announced on 10 October 2023 provide for an on-the-spot \$400 fine for possession of small quantities of a range of illicit drugs, including up to 3g of methamphetamine ('ice'). The drugs and small quantities are set out in the *Drugs Misuse and Trafficking Act 1985 (NSW)*, Schedule 1. More drugs are eligible for the NSW changes than under the ACT reforms.

Police will be able to issue up to two fines, and the fine may be discharged through a health diversion program. If the health diversion program is not completed, the penalty will be enforced.

While the ACT approach similarly allows discharge of the offence through a fine or attendance at a health diversion session, it is not an on-the-spot fine.

NSW Police will retain their discretion in all cases to charge a person and proceed to court. Unlike in the ACT, NSW has not proposed any changes to its maximum penalties for these offences. Like in the ACT, it is still an offence to possess and use illicit drugs.

QLD

Unlike the ACT, Queensland does not have provision for offence notices (fines) for small amounts of illicit drugs.

It currently has a police diversion program for low-level cannabis possession, and legislation was passed in 2023 to expand this to a wider range of drugs. It appears this applies to the drugs included in ACT changes, including methamphetamine. These amendments have not yet commenced.

In contrast, the ACT has had a police diversion program for all illicit drugs since 2001.

A warning will be given the first time someone is caught carrying a small amount of a dangerous drug. The offer to complete a drug diversionary program will be made on the second and third occasions.

The Queensland legislation requires police to issue a warning where a person has not previously been warned, and to offer two diversions. It appears that police may offer any number of warnings or diversions to a minor.

Under the ACT changes, whether to divert a person remains a matter for police discretion. However, we understand ACT Policing intend to divert people in the first instance in most cases.

A range of conditions apply for the Queensland legislation, including that a person must not have previously been convicted of certain offences, which is not the case in the ACT legislation.

Queensland retains substantial maximum penalties for possession if the matter proceeds to court.

Will the reforms be monitored and evaluated?

An independent review into the changes will be conducted after two years of operation. The review will consider potentially reduced harms from involvement in the criminal justice system, particularly at a young age, and potential gains in efficiency and cost savings. Drug trends following the legislative changes will be carefully monitored drawing on local data on drug use and advice from an expert consultative group.

Is the government going to increase investment in the alcohol and other drug treatment sector?

ACT Government investment in alcohol and drug treatment and harm reduction services in the ACT are delivered by both Canberra Health Services and non-government treatment providers. The ACT has the second highest rate of alcohol and other drug treatment nationally, behind the Northern Territory.

Through the 2023-24 Budget, the ACT Government committed to nation-leading drug law reform and harm minimisation measures, in line with the aims of the *ACT Drug Strategy Action Plan 2022-26*.

The 2023-24 Budget also included investment to redevelop and expand the services of the Watson Health Precinct. This includes design and construction of the ACT's first Aboriginal and Torres Strait Islander specific alcohol and other drug residential rehabilitation facility, and construction of a new facility for Ted Noffs Foundation for youth AOD treatment.

Further investments will be considered in the context of the *ACT Drug Strategy Action Plan 2022-26*, future Budgets, and the current process of re-commissioning ACT alcohol and other drug treatment services.

Growth in ACT Government AOD funding

The ACT Government invests more than \$26 million each year in alcohol and drug treatment and harm reduction services in the ACT, which are delivered by both Canberra Health Services and non-government treatment providers. The ACT has the second highest rate of alcohol and other drug treatment nationally, behind the Northern Territory.

In the 2023-24 Budget, the ACT Government provided \$2.8 million over four years for nation-leading drug law reform and harm minimisation measures, in line with the aims of the *ACT Drug Strategy Action Plan 2022-26*.

The 2023-24 Budget also included \$47.8 million over 3 years for redeveloping and expanding the services of the Watson Health Precinct. This includes design and construction of the ACT's first Aboriginal and Torres Strait Islander specific alcohol and other drug residential rehabilitation facility, and construction of a new facility for Ted Noffs Foundation for youth AOD treatment.

Through the 2022-23 Budget, the Government invested \$13 million in additional ongoing support for alcohol and other drug treatment and support services. This includes funding to continue residential alcohol and other drug treatment services; expansion of multidisciplinary clinical staffing capacity to increase targeted treatment of methamphetamine; and a new support service and counsellors for families, carers and children of people who use drugs.

The 2022-23 funding built on the additional almost \$20 million the Government provided for new alcohol and other drug treatment and harm reduction services over the life of the *ACT Drug Strategy Action Plan 2018-2021*, including an additional \$2.93 million to Canberra Health Services over four years (ongoing) to expand early intervention and diversion programs for people in contact, or at risk of contact, with the criminal justice system.

Further investments will be considered in the context of the *ACT Drug Strategy Action Plan 2022-26*, future Budgets, and the current process of re-commissioning ACT alcohol and other drug treatment services.



Date: 23 October 2023

SUBJECT: Senate motion regarding Drugs of Dependence (Personal Use) Amendment Bill

Talking Points

Whether the Bill was “rushed through” (covering timeframes, consultation, Committee inquiries, etc)

- This reform has been supported by extensive consultation and input from policy experts, local and national drug and alcohol sector advocates, service providers, ACT Government directorates and ACT Policing.
- While developing the Government amendments to the original Private Member’s Bill, the ACT Health Directorate regularly engaged with ACT Policing and other stakeholders in working groups and individual meetings. This work continued through the 12-month implementation period to ensure implementation arrangements are underpinned by a shared understanding of the purpose of the reforms.
- The reforms were subject to public scrutiny, including as part of a Legislative Assembly inquiry, over a period of more than 18 months prior to passage, with a further 12 month implementation period ahead of commencement. The history of the reforms is as follows:
 - Mr Michael Petterson MLA introduced the Drugs of Dependence (Personal Use) Amendment Bill 2021 on 11 February 2021.
 - It was referred to the Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021 on the same day.
 - The Select Committee received 59 submissions, most of which supported the Bill.
 - The Select Committee also held public hearings over five days in July 2021.
 - The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) provided a Scrutiny Report on the Bill on 24 March 2021.
 - The Select Committee report was released on 30 November 2021. It included a dissenting report from Mr Peter Cain MLA.
 - The Government response to the Select Committee report was tabled on 9 June 2022.
 - Government amendments to the Bill were circulated ahead of limited debate in the Assembly on 3 August 2022.
 - The Bill was debated and passed (with Government amendments) on 20 October 2022. The Drugs of Dependence (Personal Use) Amendment Act 2022 was notified on 28 October 2022 and will commence on 28 October 2023.

How the quantities of each drug were decided and mixed weight vs pure weight

- Development of the small quantity amounts in the Act drew on regular drug users' estimates of how much they consume reported in the Ecstasy and Related Drugs Reporting System and the Illicit Drugs Reporting System in 2020 and 2021. The analysis drew on both ACT and national data.
- The proposed small quantities drew on drug users' reports of heavy consumption over 1-2 days, acknowledging that drug users have a range of consumption patterns that are estimated by this data, and which cannot be measured directly.
- Data from these reports was supplemented by additional data summarised in the University of New South Wales Drug Policy Modelling Program in its submission to the Select Committee Inquiry on the Bill. The Drug Policy Modelling Program provided some information on average purchase quantities, although this not available for every drug.
- The ACT Health Directorate also carried out consultations on the small quantity amounts with Canberra Health Services' Alcohol and Drug Service, ACT Policing, and ACT Government Laboratories.
- The small quantity amount for MDMA and ecstasy was raised following this assessment process to 1.5 grams from the 0.5 grams originally proposed in the Private Member's Bill. The small quantity amounts for harvested and dried cannabis were maintained at the level in the Private Member's Bill.
- The small quantities for other drugs were lowered: these quantities were initially based on Commonwealth trafficable quantities, not on evidence of consumption patterns.
- The small quantities amounts determined by this process are in broad terms similar to the small quantity amounts used to determine lesser penalties in NSW and Victoria.

Consistency with Commonwealth legislation (including the response about interactions with the Commonwealth's aviation and crimes at sea legislation, as requested last week in relation to Jervis Bay)

- It is the ACT Government's view that the changes to ACT criminal laws relating to personal possession of small amounts of certain otherwise illicit drugs can operate concurrently with the Commonwealth Criminal Code 1995 and are valid and effective everywhere in the ACT.
- The Act applies to Jervis Bay Territory.
- The ACT Government notes that the application of ACT laws to Jervis Bay Territory, and the application of laws of Jervis Bay Territory to aircraft, ships and areas outside of Australia, is a matter for the Commonwealth Government, and the Commonwealth may alter the operation of ACT laws in the Jervis Bay Territory as it considers appropriate.
- The *Jervis Bay Territory Acceptance Act 1995* (Cth), s4A(1) provides that the laws in force in the ACT are also in force in Jervis Bay Territory, so far as they are applicable to Jervis Bay Territory and not inconsistent with a Commonwealth Ordinance.
- The Australian Federal Police and ACT Policing retain the ability to charge someone with the Commonwealth drug possession offence under s 308.1 of the Criminal Code 1995 (Cth). Noting this continues to apply in the ACT, it follows that it also applies in Jervis Bay Territory and elsewhere where Jervis Bay Territory law applies, in conjunction with other provisions of the Criminal Code, which define how Code offence provisions apply outside Australia.

Whether drug use is a driver of crime

- Research indicates that the rate of drug use is not strongly linked to levels of punishment for personal possession, however the government will carefully monitor drug trends following any changes to legislation.

- The consumption of alcohol and other drugs may influence people to engage in risky or criminal activities such as driving a motor vehicle, offensive conduct and verbal or physical violence. However, most people who regularly use alcohol or illicit drugs do not report engaging in risky behaviours or criminal activity.
- People who recently used illicit drugs were more likely than recent drinkers to engage in criminal behaviour. However, criminal activity is generally declining.
- The most recently available data from the National Drug Strategy Household Survey is from 2016 and showed that of people aged 14 and over:
 - 3.1 per cent of people who recently used illicit drugs created a disturbance, damaged or stole goods, this is down from 5.9 per cent in 2007; and
 - 0.6 per cent of people who recently used illicit drugs physically abused someone, this is down from 2.4 per cent in 2007.
- While illicit drugs are associated with a range of harms, this also means that it is important to encourage people who use them to access health services to seek help. People who use heroin and methamphetamine, particularly people who inject these drugs, are potentially some of the most marginalised people who are most likely to benefit from diversion out of the criminal justice system and to health services.
- The reforms are intended to help to reduce stigma around illicit drug use and encourage people to access the supports they may need, including drug treatment.
- Drug treatment is an effective way to reduce crime driven by addictive drug use.
- It is also important to note that crime is driven by a wide range of factors.

Investment in health services/funding growth

- The ACT Government invests more than \$26 million each year in alcohol and drug treatment and harm reduction services in the ACT, which are delivered by both Canberra Health Services and non-government treatment providers. The ACT has the second highest rate of alcohol and other drug treatment nationally, behind the Northern Territory.
- In the 2023-24 Budget, the ACT Government provided \$2.8 million over four years for nation-leading drug law reform and harm minimisation measures, in line with the aims of the *ACT Drug Strategy Action Plan 2022-26*.
- The 2023-24 Budget also included \$47.8 million over three (3) years for redeveloping and expanding the services of the Watson Health Precinct. This includes design and construction of the ACT's first Aboriginal and Torres Strait Islander specific alcohol and other drug residential rehabilitation facility, and construction of a new facility for Ted Noffs Foundation for youth alcohol and other drug treatment.
- Through the 2022-23 Budget, the Government invested \$13 million in additional ongoing support for alcohol and other drug treatment and support services. This includes funding to continue residential alcohol and other drug treatment services; expansion of multidisciplinary clinical staffing capacity to increase targeted treatment of methamphetamine; and a new support service and counsellors for families, carers and children of people who use drugs.
- The 2022-23 funding built on the additional almost \$20 million the Government provided for new alcohol and other drug treatment and harm reduction services over the life of the *ACT Drug Strategy Action Plan 2018-2021*, including an additional \$2.93 million to Canberra Health Services over four (four) years to expand early intervention and diversion programs for people in contact, or at risk of contact, with the criminal justice system.

- Further investments will be considered in the context of the *ACT Drug Strategy Action Plan 2022-26*, future Budgets, and the current process of re-commissioning ACT alcohol and other drug treatment services.

Any particular words we've provided previously around comments from the ACT Law Society, pharmacists, the AFP, and ACT Policing including on "narco tourism"

- The drugs remain illegal and will still be confiscated, and drug use is not safe or encouraged. These messages are a key part of the communications campaign, both targeted and for the general public.
- Higher penalties still apply for possession above the small quantity limits for the affected drugs, and of any amount of other drugs. The changes do not affect other legislation. Trafficking and supply laws do not change and these offences retain significant criminal penalties.
- Research indicates that drug use is not strongly linked to levels of punishment for personal possession. It is important to note that diversion is an accepted part of the broader national harm minimisation approach to drug use, of which traditional law enforcement is also one part.
- While illicit drugs are associated with a range of harms, this also means that it is important to encourage people who use them to access health services to seek help. People who use heroin and methamphetamine, particularly people who inject these drugs, are potentially some of the people who are most likely to benefit from diversion out of the criminal justice system and to health services.
- An independent review into the changes will be conducted after two years of operation. Drug trends following the legislative changes will be carefully monitored drawing on local data on drug use and advice from an expert consultative group.

Laws around trafficking and supply not changing

- Supply and trafficking laws are not changing. These offences retain significant criminal penalties.
- Drug trends following the legislative changes will be carefully monitored drawing on local data on drug use and advice from an expert consultative group.

The claim around the SCON being "exploited to sell cannabis to Canberra schoolchildren as young as 12 years old"

- In its submission to the Select Committee Inquiry into the Drugs of Dependence Bill, published in June 2021, ACT Policing highlighted a case of the eligible quantity for a simple cannabis offence notice being exploited to sell cannabis to Canberra schoolchildren as young as 12 years old.
- The Government does not have access to the details of this matter beyond what is provided in the submission.
- However, from the information provided, the Government notes that while the amount in question was a personal possession amount, this was a circumstance of selling drugs to young people. A range of evidence can be used to prove a criminal charge of supply, regardless of the amount in question.

Points around fentanyl and how/why the ACT scheme only covers specific drugs. Similarly, any background points around decriminalisation in other jurisdictions

- The ACT cannot be directly compared to other jurisdictions. No other reforms are precisely the same as those in the ACT, and the exact experience of each jurisdiction is different for a range of reasons, including cultural and geographic differences.

- For example, many of the international jurisdictions to which the ACT has been compared are dealing with toxic drug supply issues, particularly in relation to fentanyl. They also have different legal systems.
- It should also be noted that the societal problems that some have attributed to drug policies in other jurisdictions, such as homelessness, are multi-faceted and arise from a range of factors.
- It is also important to consider a range of sources when assessing the impact of reforms. Many points raised have focused solely on the views of police.
- The ACT Government will continue to monitor information and evaluation data as it becomes available from other jurisdictions.

Portugal

- Portugal moved drug possession offences out of the court system and introduced drug tribunals which encouraged people to attend treatment.
- The Portuguese approach has been criticised for being overly resource intensive since most people referred to drug tribunals were non-dependent cannabis users. The ACT has already gone further than Portugal and fully lifted penalties for adult cannabis use.
- Low-level drug possession in the ACT can still be prosecuted in court where appropriate, and this is likely to occur where other offences are involved. ACT Policing also retain the option to charge people under Commonwealth law.

British Columbia

- The reforms in British Columbia, Canada, in place since January 2023, are more extensive than the reforms in the ACT. They have effectively legalised small quantities of all illicit drugs across the entire province, meaning police have limited powers to intervene or seize drugs.
- In contrast, in the ACT, illicit drugs will remain illegal, and police retain the power to search people and seize illicit drugs, as well as a range of other powers. They can also still charge people for other illegal behaviour that occurs in conjunction with drug possession.

San Francisco

- San Francisco's law reforms, introduced in 2014, included a reduction in classification and penalties for drug possession for personal use. However, they were much broader than the upcoming ACT reforms. In San Francisco, property crimes (such as fraud and theft) where the property involved is less than \$950 in value are no longer prosecuted as felonies. This reform is not proposed in the ACT.
- ACT Policing retain the power to charge someone with other associated crimes. If a person is in possession of drugs and charged with other offences it is likely they will be charged with drug possession offences at the same time.

Portland, Oregon

- Portland's reforms, which came into effect in early 2021, are similar to those in the ACT. However, Portland ranks 50th out of 50 states in the United States for per capita drug treatment. In contrast, the ACT has the second-highest per capita treatment rate in Australia. The ACT Government's strong ongoing investment in drug treatment services will support the implementation of the drug law reforms.
- It has also been suggested that police in Portland lack power to search those suspected to be in possession of illicit drugs. Police in the ACT will retain this power.

NSW

- NSW law currently provides for a \$400 penalty for possession of a small quantity of MDMA and ecstasy at music festivals only.
- The changes announced on 10 October 2023 provide for an on-the-spot \$400 fine for possession of small quantities of a range of illicit drugs, including up to three (3) grams of methamphetamine or 'ice'. The drugs and small quantities are set out in the *Drugs Misuse and Trafficking Act 1985* (NSW), Schedule 1. More drugs are eligible for the NSW changes than under the ACT reforms.
- Police will be able to issue up to two fines, and the fine may be discharged through a health diversion program. If the health diversion program is not completed, the penalty will be enforced.
- While the ACT approach similarly allows discharge of the offence through a fine or attendance at a health diversion session, it is not an on-the-spot fine.
- NSW Police will retain their discretion in all cases to charge a person and proceed to court. Unlike in the ACT, NSW has not proposed any changes to its maximum penalties for these offences. Like in the ACT, it is still an offence to possess and use illicit drugs.

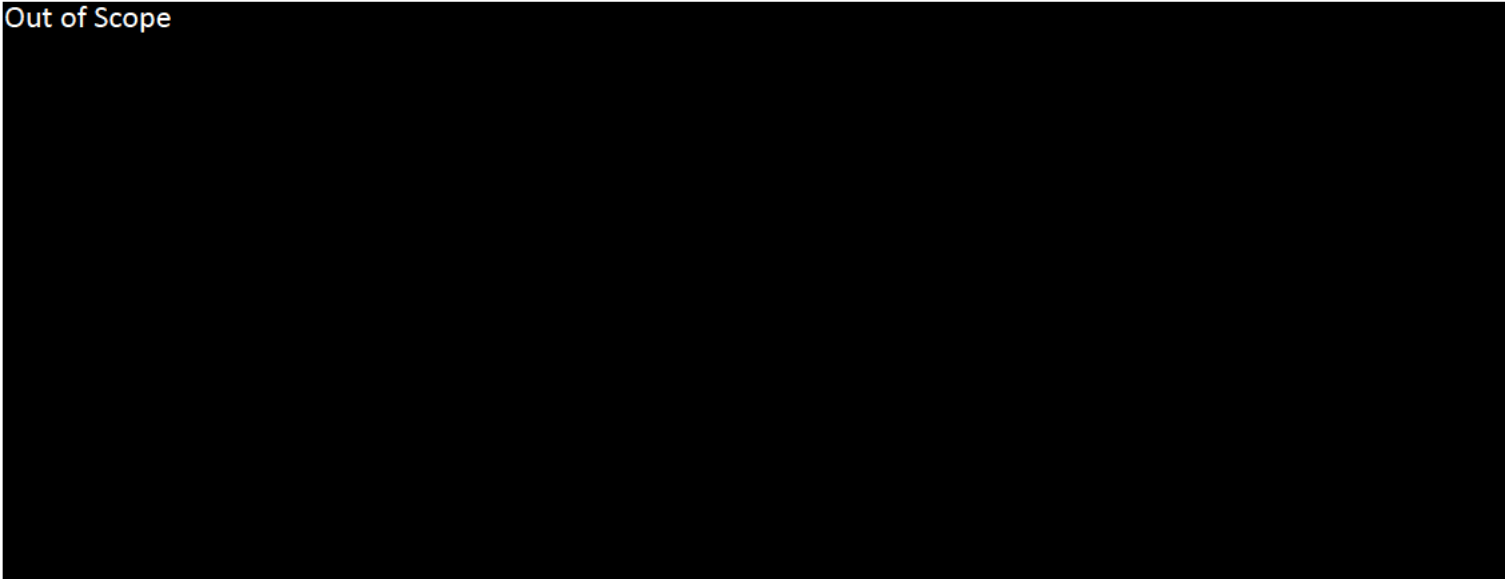
QLD

- Unlike the ACT, Queensland does not have provision for offence notices or 'fines' for small amounts of illicit drugs.
- It currently has a police diversion program for low-level cannabis possession, and legislation was passed in 2023 to expand this to a wider range of drugs. It appears this applies to the drugs included in ACT changes, including methamphetamine. These amendments have not yet commenced.
- In contrast, the ACT has had a police diversion program for all illicit drugs since 2001.
- A warning will be given the first time someone is caught carrying a small amount of a dangerous drug. The offer to complete a drug diversionary program will be made on the second and third occasions.
- The Queensland legislation requires police to issue a warning where a person has not previously been warned, and to offer two diversions. It appears that police may offer any number of warnings or diversions to a minor.
- Under the ACT changes, whether to divert a person remains a matter for police discretion. However, we understand ACT Policing intend to divert people in the first instance in most cases.
- A range of conditions apply for the Queensland legislation, including that a person must not have previously been convicted of certain offences, which is not the case in the ACT legislation.
- Queensland retains substantial maximum penalties for possession if the matter proceeds to court.

Cleared By: Kerryn Coleman, Chief Health Officer

MINISTER FOR MENTAL HEALTH

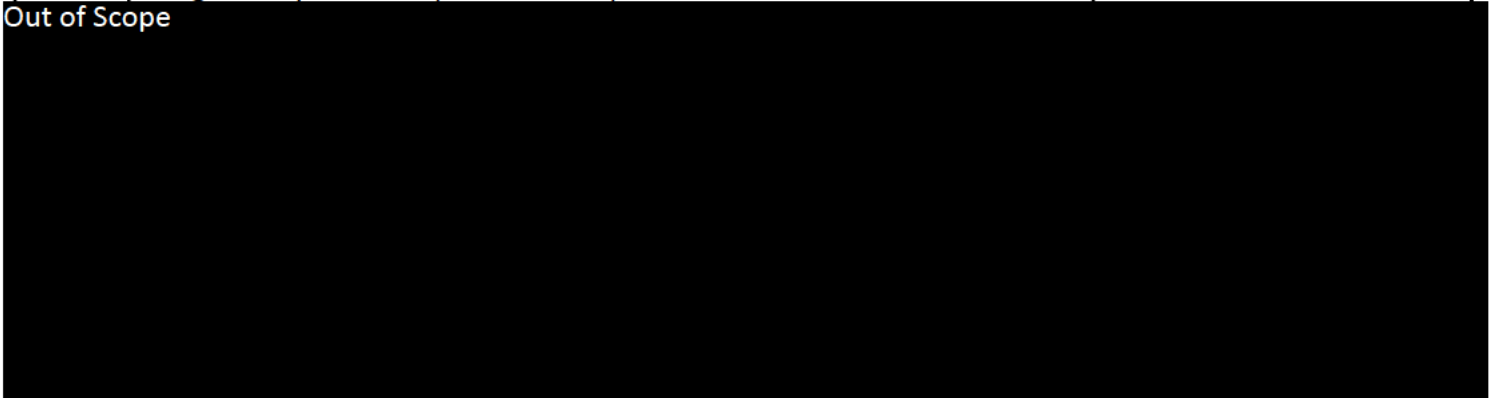
Out of Scope



MINISTER FOR POPULATION HEALTH

| SUBJECT | | Directorate Lead |
|------------|--|------------------|
| HOT ISSUES | | |
| 1. | Drugs of Dependence (Personal Use) Amendment Act | PHD |

Out of Scope



GBC23/809

Portfolio: Population Health**Drugs of Dependence (Personal Use) Amendment Act****Talking points:**

- The *Drugs of Dependence (Personal Use) Amendment Act 2022* (the Act) commenced on 28 October 2023. The reforms aim to divert people who use drugs away from the criminal justice system and encourage them to access health services.
- If a person is apprehended in possession of a small quantity of certain drugs, police may refer them to an assessment and education session with Canberra Health Services or may issue them with a Simple Drug Offence Notice, which carries a \$100 fine.
- The health session involves a health assessment to assess the person's wellbeing and to identify any need for support or early intervention relating to problematic drug use. Canberra Health Services staff provide assessment, education around harm minimisation and assist in creating external referrals if needed or necessary to further support the person.
- If either option is completed, no further action will be taken, and the person will not receive a criminal record. However, the drugs remain illegal and will be confiscated by police.
- Police retain discretion to charge the person to appear in court. The maximum fine that a court can impose for possession at or below the small quantity limits is \$160, and no prison sentence can be imposed.
- The Act also reduces the maximum prison sentence for personal possession of drugs above the new small quantity thresholds, from two years to six months.
- Between 28 October 2023 and 24 January 2024 ACT Policing recorded 76 instances of small quantity drug seizures for action. Of these, 73 consented to drug diversion.
- By comparison, over the 2022-23 financial year, ACT Policing made 174 referrals to Canberra Health Services for drug diversion.
- While the data on small drug seizures to 24 January 2024 may indicate an increase in opportunities for ACT Policing to contribute to reducing drug-related harms through diversion away from the criminal justice

Cleared as complete and accurate: 25/01/2024

Cleared for public release by: Executive Group Manager

Ext: 49922

Contact Officer name: Maria Travers

Lead Directorate: Health

TRIM Ref: GBC23/809

system, three months is a short timeframe to determine potential impacts of the legislation.

- The ACT Health Directorate continues to work closely with a range of government and non-government stakeholders to support implementation of the changes and develop arrangements for monitoring and evaluation.
- There will be an independent evaluation of the changes after two years of operation, as required by the Act. The ACT Health Directorate intends to engage an independent evaluator in 2024.
- The ACT Government invests more than \$26 million each year in alcohol and drug treatment and harm reduction services in the ACT, which are delivered by both CHS and non-government treatment providers. The ACT has the second highest rate of alcohol and other drug treatment nationally, behind the Northern Territory.

Background

- It remains illegal for a person to drive with any level of illegal substances in their system.
- Rules about cannabis, including personal possession limits and the number of plants that a person can grow, still apply and will be enforced.
- If a person is in possession of drugs and charged with other offences at the same time, it is likely they will be charged with drug possession offences alongside the other offences rather than referred to Canberra Health Services or issued a fine.
- Possession of large amounts of illicit drugs (above the new 'small quantity' thresholds but below drug trafficking limits) still attract higher fines (up to \$8,000) and potential prison sentences of up to six months (reduced from two years).
- It remains illegal to supply and manufacture drugs. Penalties for these offences have not changed.
- Nothing has changed for businesses and licenced venues, as it is still illegal to take any level of drugs in a public place or venue, and anyone doing so can be instructed to leave by management. Venues should still follow guidance provided under the Liquor Act in relation to people showing signs of intoxication as a result of the consumption of liquor, drugs, or a combination of both.
- Of the 76 instances of small quantity drug seizures recorded by ACT Policing between 28 October 2023 and 24 January 2024:

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Contact Officer name: Maria Travers
Lead Directorate: Health
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- Three did not consent to drug diversion.
 - One Simple Drug Offence Notice was issued with a due date of 2 January 2024 and had not been paid at 24 January 2024.
 - Two are awaiting advice prior to issuing a Simple Drug Offence Notice.
- 73 consented to drug diversion. Of these, at 24 January 2024:
 - 53 were compliant for drug diversion completion;
 - Seven were awaiting the outcome of drug diversion;
 - 13 were non-compliant for drug diversion completion and awaiting advice prior to issuing a Simple Drug Offence Notice.

Quantities and types of illicit drugs included in the changes:

| Drug | Small Quantity |
|--|---------------------|
| Amphetamine | 1.5g |
| Cocaine | 1.5g |
| Methylamphetamine ('ice' or 'meth') | 1.5g |
| 3,4 Methylendioxyamphetamine (MDMA or 'ecstasy') | 1.5g (or 5 DDU)** |
| Cannabis (dried)* | 50g |
| Cannabis (harvested cannabis)* | 150g |
| Heroin | 1g |
| Lysergic acid | 0.001g (or 5 DDU)** |
| Lysergide (LSD, LSD-25) | 0.001g (or 5 DDU)** |
| Psilocybin ('magic mushrooms') | 1.5g |

- **There is a discrete dose unit (DDU) for MDMA, lysergide and lysergic acid which are often packaged as a single dose, for example, capsules or tablets. This means you can be eligible for a diversion if you have no more than five MDMA, lysergide or lysergic acid doses, such as capsules or tablets
- **Only those aged under 18 can be given a Simple Drug Offence Notice for possession of small amounts of cannabis. There are no penalties for low-level adult possession of cannabis.
- If an individual has two different types of eligible illicit drugs, they may be eligible for a Simple Drug Offence Notice if they have no more than 100 per cent of the small quantity limit of each drug.

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Contact Officer name: Maria Travers

Lead Directorate: Health

TRIM Ref: GBC23/809



ACT Health Directorate

| | | |
|-------------------------|--|-----------------------------|
| To: | Minister for Population Health | Tracking No.: MIN2024/00089 |
| CC: | Robyn Hudson, Deputy Director-General, Policy and Transformation | |
| From: | Maria Travers, A/g Executive Group Manager, Population Health Division | |
| Subject: | Meeting - Alcohol, Tobacco and Other Drug Association ACT | |
| Critical Date: | 26/02/2024 | |
| Critical Reason: | The meeting is scheduled for this day | |

Recommendation

1. That you note the information contained in this brief.

Noted / Please Discuss

Emma Davidson MLA/...../.....

Minister's Office Feedback

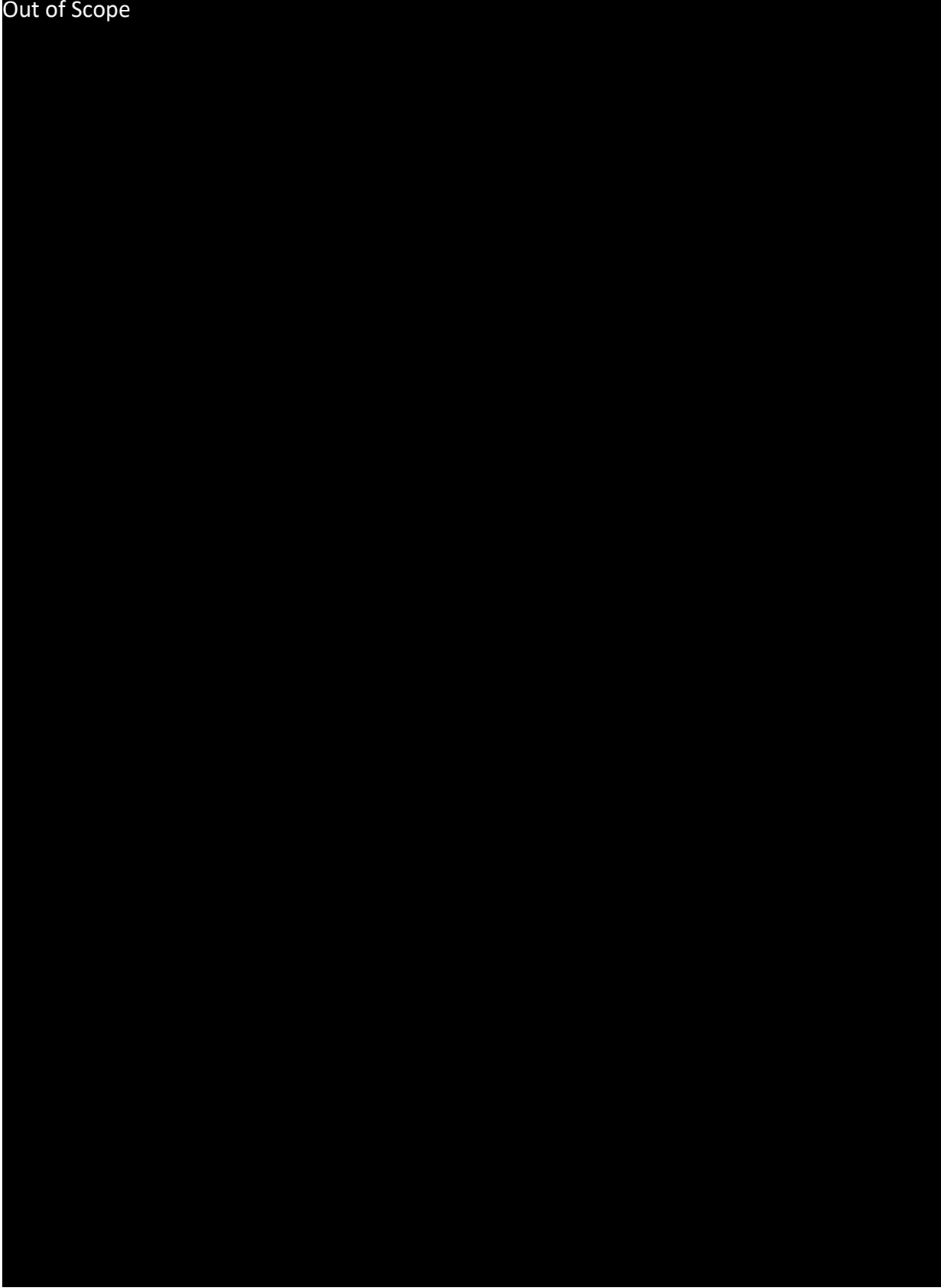
Background

1. Alcohol, Tobacco and Other Drug Association ACT (ATODA) is the ACT's peak body for the ACT's Alcohol, Tobacco and Other Drug (ATOD) sector.
2. ATODA receives peak body funding from ACT Health Directorate (ACTHD) of \$867,120 annually (GST exclusive).
3. Ms Anita Mills has been the Chief Executive Officer of ATODA since August 2023. She has a background in public health and social policy and previously worked for the Australian Medical Association.

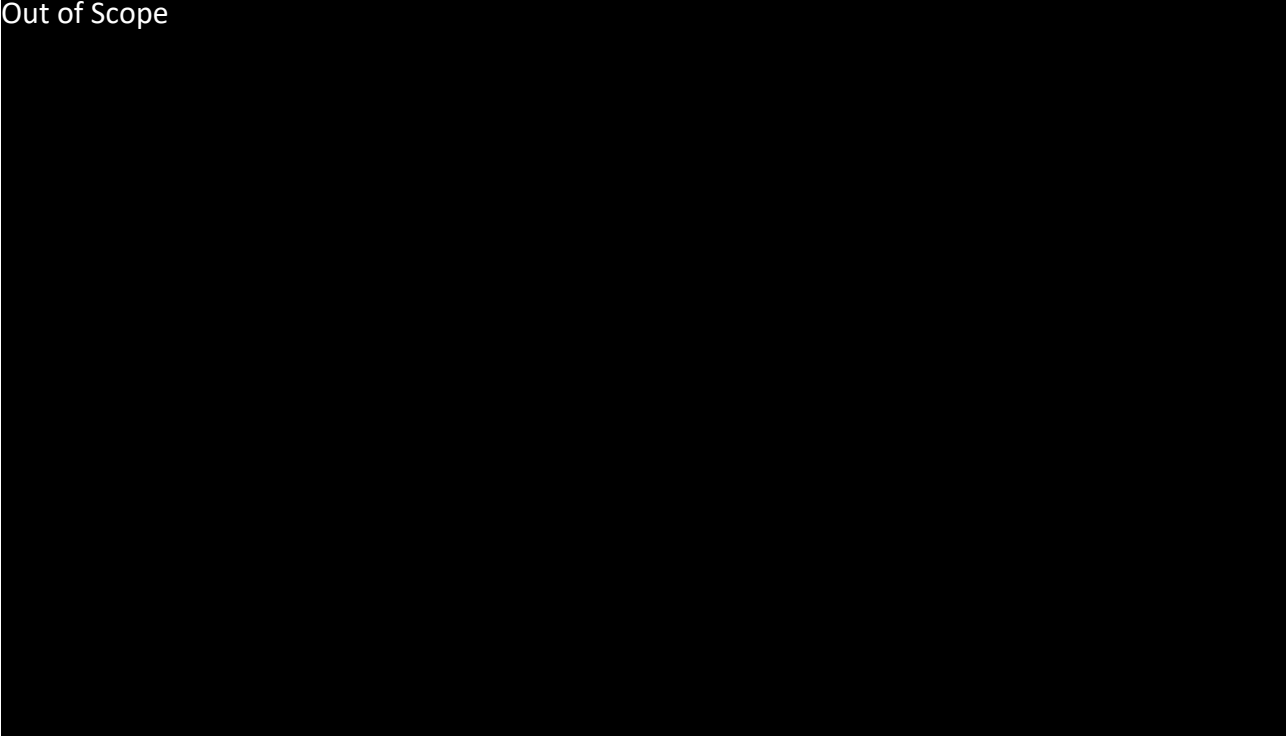
4. Maria Travers, A/g Executive Group Manager, Population Health Division and Megan Arnold, Senior Director, Alcohol, Tobacco and Other Drugs are attending this meeting as Directorate representatives.

Issues

Out of Scope



Out of Scope



Drugs of Dependence law reforms

23. The *Drugs of Dependence (Personal Use) Amendment Act 2022*, which commenced on 28 October 2023, reduced maximum penalties for possessing small amounts of some illegal drugs for personal use.
24. Ms Mills represents ATODA on the Drugs of Dependence Implementation Group, which includes key government and non-government stakeholders with an interest in implementation of the reforms.
25. The group will be refreshed in 2024 to focus on monitoring and evaluation of the reforms. ACTHD has developed an initial monitoring and evaluation framework. This will inform the independent evaluation of the changes, which is required by the legislation. ACTHD expects to engage an independent evaluator for the reforms in the first half of 2024.
26. ATODA is interested in wait times for Canberra Health Services (CHS) diversion sessions following police referral (to date not significant), and the rate of referrals for further treatment after the initial diversion session. ATODA is undertaking a qualitative review of the impact of the reforms on the non-government ATOD treatment and support service sector. ACTHD notes it may be difficult to discern specific impacts of the changes on the sector given the range of confounding factors.

Financial Implications

27. Not applicable.

ConsultationInternal

28. Mental Health, Wellbeing and Suicide Prevention and Public Health and Regulation.

Cross Directorate

29. ACTHD meets regularly with Justice and Community Safety, ACT Policing, and the Alcohol and Drug Service within CHS across a range of fora related to ATOD issues and projects. ATODA is a member of many of these groups.

External

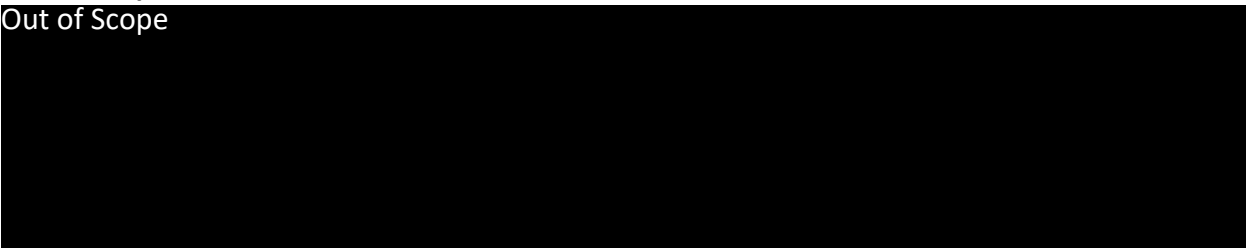
30. ACTHD meets fortnightly with ATODA to discuss current issues and plan future work within the sector and government. ACTHD has also been attending monthly AOD Executive Group meetings since mid-2023, providing updates to sector leaders on priority issues including the Drugs of Dependence law reforms, commissioning, and matters relating to the Drug and Alcohol Sentencing List.

Work Health and Safety

31. Not applicable.

Benefits/Sensitivities

Out of Scope


Communications, media and engagement implications

33. Not applicable.

Signatory Name: Maria Travers, A/g Executive Group
Manager, Population Health Division

Phone:



Action Officer: Megan Arnold, Senior Director,
Alcohol, Tobacco and Other Drug
Policy

Phone:



GBC24/84

Portfolio: Population Health**Drugs of Dependence (Personal Use) Amendment Act****Talking points:**

- The *Drugs of Dependence (Personal Use) Amendment Act 2022* (the Act) commenced on 28 October 2023. The reforms aim to divert people who use drugs away from the criminal justice system and encourage them to access health services.
- If a person is apprehended in possession of a small quantity of certain drugs, police may refer them to an assessment and education session with Canberra Health Services or may issue them with a Simple Drug Offence Notice, which carries a \$100 fine.
- The health session involves a health assessment to assess the person's wellbeing and to identify any need for support or early intervention relating to problematic drug use. Canberra Health Services staff provide assessment, education around harm minimisation and assist in creating external referrals if needed or necessary to further support the person.
- If either option is completed, no further action will be taken, and the person will not receive a criminal record. However, the drugs remain illegal and will be confiscated by police.
- Police retain discretion to charge the person to appear in court. The maximum fine that a court can impose for possession at or below the small quantity limits is \$160, and no prison sentence can be imposed.
- The Act also reduces the maximum prison sentence for personal possession of drugs above the new small quantity thresholds, from two years to six months.
- Between 28 October 2023 and 24 January 2024 ACT Policing recorded 76 instances of small quantity drug seizures for action. Of these, 73 consented to drug diversion.
- By comparison, over the 2022-23 financial year, ACT Policing made 174 referrals to Canberra Health Services for drug diversion.
- While the data on small drug seizures to 24 January 2024 may indicate an increase in opportunities for ACT Policing to contribute to reducing drug-related harms through diversion away from the criminal justice

Cleared as complete and accurate: 05/03/2024

Cleared for public release by: Executive Group Manager

Ext: 49922

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Lead Directorate: Health

TRIM Ref: GBC24/84

system, three months is a short timeframe to determine potential impacts of the legislation.

- The ACT Health Directorate continues to work closely with a range of government and non-government stakeholders to support implementation of the changes and develop arrangements for monitoring and evaluation.
- There will be an independent evaluation of the changes after two years of operation, as required by the Act. The ACT Health Directorate intends to engage an independent evaluator in 2024.
- The ACT Government invests more than \$26 million each year in alcohol and drug treatment and harm reduction services in the ACT, which are delivered by both CHS and non-government treatment providers. The ACT has the second highest rate of alcohol and other drug treatment nationally, behind the Northern Territory.

Background

- It remains illegal for a person to drive with any level of illegal substances in their system.
- Rules about cannabis, including personal possession limits and the number of plants that a person can grow, still apply and will be enforced.
- If a person is in possession of drugs and charged with other offences at the same time, it is likely they will be charged with drug possession offences alongside the other offences rather than referred to Canberra Health Services or issued a fine.
- Possession of large amounts of illicit drugs (above the new 'small quantity' thresholds but below drug trafficking limits) still attract higher fines (up to \$8,000) and potential prison sentences of up to six months (reduced from two years).
- It remains illegal to supply and manufacture drugs. Penalties for these offences have not changed.
- Nothing has changed for businesses and licenced venues, as it is still illegal to take any level of drugs in a public place or venue, and anyone doing so can be instructed to leave by management. Venues should still follow guidance provided under the Liquor Act in relation to people showing signs of intoxication as a result of the consumption of liquor, drugs, or a combination of both.
- Of the 76 instances of small quantity drug seizures recorded by ACT Policing between 28 October 2023 and 24 January 2024:

- Three did not consent to drug diversion.
 - One Simple Drug Offence Notice was issued with a due date of 2 January 2024 and had not been paid at 24 January 2024.
 - Two are awaiting advice prior to issuing a Simple Drug Offence Notice.
- 73 consented to drug diversion. Of these, at 24 January 2024:
 - 53 were compliant for drug diversion completion;
 - Seven were awaiting the outcome of drug diversion;
 - 13 were non-compliant for drug diversion completion and awaiting advice prior to issuing a Simple Drug Offence Notice.

Quantities and types of illicit drugs included in the changes:

| Drug | Small Quantity |
|---|-----------------------|
| Amphetamine | 1.5g |
| Cocaine | 1.5g |
| Methylamphetamine ('ice' or 'meth') | 1.5g |
| 3,4 Methylenedioxymethamphetamine (MDMA or 'ecstasy') | 1.5g (or 5 DDU)** |
| Cannabis (dried)* | 50g |
| Cannabis (harvested cannabis)* | 150g |
| Heroin | 1g |
| Lysergic acid | 0.001g (or 5 DDU)** |
| Lysergide (LSD, LSD-25) | 0.001g (or 5 DDU)** |
| Psilocybin ('magic mushrooms') | 1.5g |

- **There is a discrete dose unit (DDU) for MDMA, lysergide and lysergic acid which are often packaged as a single dose, for example, capsules or tablets. This means you can be eligible for a diversion if you have no more than five MDMA, lysergide or lysergic acid doses, such as capsules or tablets
- **Only those aged under 18 can be given a Simple Drug Offence Notice for possession of small amounts of cannabis. There are no penalties for low-level adult possession of cannabis.
- If an individual has two different types of eligible illicit drugs, they may be eligible for a Simple Drug Offence Notice if they have no more than 100 per cent of the small quantity limit of each drug.

Policy, Partnerships and Programs Division

Data Analytics Branch

ACT Health Data Repository

PPP-1371: FOI Data Request - Cannabis-related emergency department presentations by calendar year, January 2018 to December 2023



ACT
Government

ACT Health

Date Range: 01/01/2018 - 31/12/2023

Table 1: Monthly cannabis-related emergency department presentations at ACT public hospitals

| Calendar year | January | February | March | April | May | June | July | August | September | October | November | December | Total |
|---------------|---------|----------|-------|-------|-----|------|------|--------|-----------|---------|----------|----------|-------|
| 2018 | | | 0 | 0 | | | | | | | | | 23 |
| 2019 | | 0 | | | 0 | 0 | 0 | | | | | 0 | 15 |
| 2020 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | | | 0 | 0 | 15 |
| 2021 | | | 0 | 0 | 0 | 0 | 0 | 0 | | | 0 | 0 | 6 |
| 2022 | | | 0 | 0 | 0 | | 0 | | 0 | | | | 14 |
| 2023 | 6 | | 6 | | 0 | | | | 6 | | | | 39 |

Note:

1. The current extract draws data from the ACT Non-admitted Patient Emergency Care National Minimum Data Set (NMDS) submissions 2017-18 through 2022-23, and ACT Non-admitted Patient Emergency Department Care data collection for Q1 & Q2 2023-24. The latter has been extracted from the ACT Data Holdings under the methodology specified in the NMDS outlined in METeOR.
2. Cannabis-related presentations are defined as emergency department presentations with a principal diagnosis relating to a cannabis use disorder or direct harm relating to use of cannabis. This data extraction is based on the 11th Edition of ICD-10-AM codes F12.0–12.9 and T40.7, in accordance with <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/technical-notes>.
3. Note that while various ICD-10-AM editions have been implemented over the reporting period, the relevant codes have remained the same.
4. The report reflects clinical information recorded at the time the NMDSs used for this analysis were created.
5. Data is accurate as of 22 April 2024.
6. Note the Digital Health Record (DHR) system was implemented in the ACT in November 2022. As such, comparison of pre- and post-DHR data is not valid as data would have been drawn from different source systems.